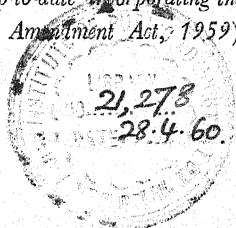


# THE CONSTITUTION OF INDIA

(As Amended up-to-date incorporating the Constitution 8th  
Amendment Act, 1959)



By

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Central Law Agency

LAW PUBLISHERS

University Road,

ALLAHABAD—2.



Rs. 5/50  
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*Published by :*  
Mr. R. N. Arora,  
For, Central Law Agency  
ALLAHABAD—2

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**PRICE Rs. 5-50 nP.**

Printed by, S. P. Fa.  
at the Nagari Press,  
Daraganj, Allahabad.

**"All rights to be deserved and preserved  
came from duty well done.**

**Every other right can be shown  
to be a usurpation hardly worth fighting for".**

*May 25th, 1947.*

*Mahatma Gandhi.*

## PREFACE TO THE SECOND EDITION

It is indeed a great pleasure in presenting the 2nd Edition of the "Constitution of India". The reception accorded to the Previous Edition was so overwhelming that it ran out of print in a short space of time.

The Present Edition besides revision in the light of latest amendments and the views expressed on vital points by the High Courts and the Supreme Court, incorporates many new features.

All recent cases of adequate importance, besides the Prescribed Leading cases have been incorporated, so as to make the Book self-sufficient. Of the Chapters which have been particularly enlarged those on Writs and Fundamental Rights deserve to be mentioned.

The Book should be found to be a vast improvement on its first edition and I hope it will continue to serve fully the needs of those for whom it is meant.

*Author.*



## PREFACE TO THE FIRST EDITION

Experience gained from teaching in the University of Allahabad and from the profession of law has persuaded me to write the book on the legal aspects of the Constitution of India, giving a brief account both of the organs of Government and of the critical aspects of Constitutional Law. The book should be of use to lawyers and University students, reading for Post-graduate degree in Modern History, Politics and Constitutional Law. It is hoped that the general reader will also find it helpful. Interpretations of the various provisions in the Constitution as given by the Supreme Court of India and other High Courts have been incorporated, wherever necessary, and cases from foreign courts have also been utilised for illustrating the principles. In this book the Constitution is surveyed as a whole with comments and criticisms, and the important Articles are also dealt with seriatim and commented upon with the help of case law and other authorities. The Principles of Law are copiously supported by quotations from judgments.

Our Constitution incorporates ideas and conceptions from the various Constitutions of the World, and there are three main sources. First is the Constitution of the United States of America, which is generally regarded as a model of a Federal Constitution, and on Fundamental Rights, judicial enquiry into validity of laws and inter-State Commerce, American decisions throw much light, although there are features of difference between the two. Secondly, in the Writ proceedings, which are the most prominent feature of the Constitution, next to Fundamental Rights, English Case Law is of immense value because the Constitution has borrowed the terminology of English Law to describe the Writs, without defining them, thus intending that the principles of English Law should be the guiding factor. Thirdly, the Constitution is to a large extent an adoption of the Government of India Act, 1935, and the decisions on that Act are also useful. Comparisons with other Constitutions have been incorporated in this Book wherever necessary.

Every effort has been made to make the Book up-to-date by incorporating every Amendment of the Constitution and the latest case-law on the subject. At the same time an attempt has been made to keep the size within the means of the Common man.

It is hoped that this Book will serve the genuine need of the scholars, lawyers as well as the general public, and it will receive their appreciation in understanding the legal and constitutional aspects and implications of our Constitution which is the longest and the most complex Constitution in the World, with most of the Articles having provisos, limitations or saving clauses.

Our Constitution is neither Unitary nor Federal, in the strict sense ; it is both and it was designed to meet the special needs of the people of this vast Country, and to be an aid to their future prosperity and welfare. It places the Country on sound foundations, supported on the four pillars of 'Justice, Liberty, Equality and Fraternity,' with guaranteed 'Fundamental Rights, enhancing the dignity of the human being. The 'Preamble' and the 'Directive Principles' are the beacon-lights which point the direction in which the Captain of the weather beaten Ship of State must set his compass and lead her on. The Constitution is flexible and by no means rigid, assuming an easy transformation of the activities of the State for the fulfilment of the sole object, the maximum good of the maximum number of the People of this sovereign Democratic Republic. Supremacy of law is also established.

I am grateful to my friends whose encouragement and advice made the completion of this Book possible. I cannot refrain from rendering my thanks to my publishers for their courtesy, inducement and help in bringing out the Publication.

I trust that this book will prove of immense use to all those who read it.

*Shripat Narain Singh*

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# THE CONSTITUTION OF INDIA

## CONSTITUTIONAL PROGRESS IN INDIA

**The Mughal Empire.**—Before the advent of the British Rule in India, the Mohammedan Rule had lasted in this country for about seven centuries. The Muslim Rulers who were outsiders and came as invaders ruled the country without any constitution, written or unwritten; the will of the monarch was the law of the land. It was naked despotism of the monarch. Very often it was benevolent but at times some of the Rulers proved tyrants also. In the later period of the Muslim Rule, the Mughal imperialism led to the prosperity and progress all round in the country. After the decline of the Mughal Imperial authority various small powers had set up their kingdoms, dividing the country into various independent or semi-independent kingdoms which were constantly at war, one against the other. After the death of Aurangzeb the powers of the Mughals had ended and law and order in the country was at the lowest ebb. The advent of the British in India begins with Queen Elizabeth's Charter of the year sixteen hundred to some merchants of London who formed the East India Company to trade with the East Indies. As a consequence of this Charter the British East India Company set up trading establishments on the east and west coasts of India and in Bengal, called factories. Each factory was independent and each settlement was administered and controlled by a Governor or agent with a council of some senior servants of the company. The Governor was directly responsible to the Court of Directors in England. Up to 1845 the company had no territorial aims and existed only for the sake of trade in the East.

### **The East India Company and its Charters.**

**Charter of 1600**—The first charter of 1600 was mainly designed for trade in order to meet competition with the Portu-

guese and the Dutch. It granted permit to 'traffic and use the trade of merchandise, and to assemble themselves in any convenient place, to make reasonable laws and ordinances for the good government of the East India Company and of all officers employed for the better advancement and continuance of the said trade and traffic and to impose such pains, punishments and penalties by imprisonment or by fine as might seem necessary or convenient for observation of the laws and ordinances and to have exclusive rights to such traffic and trade.'

It would be noted that the factories were given power to make reasonable laws and impose punishments, thus acting in the capacity of legislature as well as courts of law. However, the British people's love for government according to law led to a provision in the Charter that the laws made by the Company in India should be reasonable and not contrary to laws, statutes or customs of the English realm. This Charter for the first time laid the foundations for British Government in India, although at that time no one in England dreamed for the establishment of British rule in India. However, this Charter contained all the provisions necessary for the constitution of a government according to law in any territory.

**Charter of 1661.**—The second Charter of 1661 gave the Company the power to coin money, to administer justice and to punish the interlopers; it also empowered the Company to constitute Governor's council and appoint other officers for their government. The Governor and councils were authorised to administer justice in all causes, civil as well as criminal, according to the laws of the kingdom and to execute judgment accordingly. It gave the Company power to make peace or war with non-christians, erect fortifications, and seize interlopers. Thus it will be seen that various aspects of sovereignty were conferred by the first Charter of sixteen hundred and they were further extended by the Charter of 1661.

**Charter of 1669, Territorial Sovereignty.**—For the first time the Charter of 1669 gave territorial sovereignty to the East India Company by granting to it the port of Bombay; it also enlarged its administrative, judicial and other governmental powers; the Company was also invested with Civil and Military Government.

**Charter of 1677, 1683, 1687.**—The Charter of 1677 empowered the Company to establish a mint at Bombay for coining money, Indian rupees.

The Charter of 1683 gave the Company full powers with respect to declaring wars and making peace with heathen nations and the king established a Court of Justice with maritime jurisdiction. The Courts were empowered to "adjudge and determine cases according to the rules of equity and good conscience and the laws and customs of Merchants."

The Charter of 1687 invested the Company with authority to establish a municipality and a Mayor's Court at Madras; the court of Record with power to try civil and criminal cases was also established. Up to 1765 a number of other charters were granted to the East India Company which considerably extended its power, established Municipality in Bombay and Calcutta and empowered them to establish Courts of Requests (just like our Small Causes Courts); the East India Company was given also power to cede territories and create probate and testamentary jurisdiction.

The affairs of the company in England as well as in India were governed by the Charters up to 1773. The Company's Governors and Agents in India administered the Company's affairs as well as the territorial Governments in India according to rules of law and constitution as provided in these charters. It was the first step on the Indian soil for the creation of a constitutional Government although in a very small strip of the territory. After 1683 the authority of the Crown to give charters and create monopoly was challenged in England by the People and the Parliament and on January 10, 1694, the Parliament had resolved that all subjects of England have equal rights to trade with the East Indies unless prohibited by the Act of Parliament. With the emergence of the supremacy of the Parliament after the Glorious Revolution of 1688 in England, the system of granting Royal Charter by the Crown ceased, and henceforth, the Parliament itself assumed that power.

**Territorial Power Grant of Divani.**—By 1740 the authority of the Mughal Empire had completely declined and European powers in India, who had strengthened their legions in their factories primarily to protect their trade, found very

profitable to utilize their troops for supporting the newly risen kingdoms in India and thus they realised the importance of their soldiers and were tempted to seize territories for their companies. The lust for territories by the various European powers, *viz.*, the French, the Dutch, the Portuguese and the British, was greatly aggravated on account of competition *inter se* and the war on the continent of Europe among them. Due to weakness of Indian rulers, divided and always fighting among themselves, and superiority of European arms and technique of war the Indian Princes were easily defeated by the foreign forces, and gradually the foundation stone was laid for foreign rule in this country. European powers in India fought among themselves also and the British company, proving to be more resourceful, ousted the French, the Dutch and the Portuguese from the Indian mainland, and established British Empire in India. Before 1765 only small gains were made by the East India Company but in 1765 Clive obtained from the Mughal Emperor, Shah Alam the grant of Divani, *i. e.* the right to collect revenues in Bengal with control over Divani Adalat. Henceforth the East India Company became a territorial Power only nominally accepting subordination to the Mughal Emperor. By this time the Company had also acquired territories in the Presidencies of Bombay and Madras.

### **The Company and the Parliament.**

**The Regulating Act, 1773.**—Although the Company had territorial sovereignty and the power of purse in India, the affairs of the Company in England were unhealthy. The Parliament, therefore, intervened so that there may be a proper regulation of the affairs and an effective system of Parliamentary supervision over the Company's administration and policy may be established. Accordingly in 1773 the Parliament passed the Regulating Act which for the first time established a unified system of government for all territories of the Company in India. This act is the basis of the establishment of the British Rule in India. The Act provided for a Governor-General with a Council of four to administer the Presidency of Fort William (Bengal), and supremacy over the Presidencies of Bombay and Fort St. George (Madras) was given to it. The subordinate Presidencies could no longer make war or treaties

as they pleased ; previous consent of the Governor-General had to be obtained. Before this Act, the Presidencies of Bengal, Bombay and Madras had for the purposes of administration of each Presidency a separate and independent Governor and Council ; each Government was autonomous within its own Presidency, and only subject to the control of the Directors at Home. The Act of 1773 created centralisation and conferred centralised power upon a Governor-General and Council at Fort William. This made the beginning of a centralised (unitary) type of government and at the same time arrested all elements of federalism existing before.

The Regulating Act empowered the Crown to establish by Royal Charter a Supreme Court of Judicature in Bengal having civil, criminal, admiralty, ecclesiastical and testamentary jurisdiction ; the litigants were given liberty to appeal to the Privy Council. The Act further empowered the Governor-General and council to promulgate ordinances and regulations for good government as should be deemed just and reasonable and not repugnant to the laws of the realm.

**Pit's Act of 1784.**—The Act of 1784 known as the Pit's Act brought Company directly under the control of the British Crown. A Board of Control, consisting of not more than six Commissioners of the Affairs of India, all of whom were Privy Councillors, was set up to direct and control all affairs of the Company in India. The Presidencies were to be governed by a Governor and council of three, including the Commander-in-Chief of the Presidency Army. This act further established centralisation and gave the Governor-General in Council at Fort William in Bengal complete powers to superintend, control and direct the several presidencies and governments created or established in the East Indies in all matters relating to any transaction, power, war, peace or the application of the revenues of forces of such Presidencies and settlements in times of war. By this Act, Unitary Government was firmly established for the whole of India, and in England the affairs of the Company and the Government of India were brought under the subordination of the Parliament of Great Britain. For the first time the germs of the system of double government were sown.

By the Act of 1823 was established a Supreme Court at Bombay almost similar to the one at Calcutta. The Supreme Court at Madras was established by the Act of 1800.

**Act of 1833, End of trading monopoly, Legislature.**—The Charter Act of 1833 brought about the end of East India Company's trading monopoly and henceforth it was declared that it held the Indian territories in trust for the Crown. The Governor-General was given the title of Governor-General of India. The Governor-General in Council became the sole Legislative Authority for making laws for the whole country ; the executive as well as the legislative functions were centralised in him. The Presidency Governments were deprived of their powers of legislation completely, and in executive sphere also they were made subordinate to the Governor General. A process of centralization was completed, uniting numerous forces existing in India ; the forces of Provincialism and regional disintegration were annihilated. For the first time a law member was added to the Governor-General's Council and he was not to take part in the executive affairs. Thus the two branches, executive and legislative, became distinct and separate ; the beginning of an Indian Legislature was made from this date.

For the first time by the Act of 1853 the sittings of the Legislative Council were made public and their proceedings were published and an Advocate-General was appointed ; the Civil Service was thrown open to the general competition.

**The Crown Rules India, Act of 1858.**—However, after the first War of Independence in 1857, the rule of the East India Company came to an end and the British Crown assumed the government of India directly under the Government of India Act 1858. Henceforth India became a British possession under the Imperial Crown of Great Britain, and it was to be administered by the Secretary of State for India who was to be a member of the British cabinet, responsible to the Parliament of Great Britain. The Governor-General became sole representative in India of the Crown and in this capacity was called the Viceroy. He was assisted by a council of High Officials each of whom was responsible for a special department of administration.

During the period of the East India Company the form of government was non-representative. After the assumption of the rule by the Crown itself growth of representative institutions gradually commenced and by stages more or less democratic form of government was established before the attainment of independence.

The Parliament Act of 1861 was of far-reaching consequence. The Act of 1861 sowed the seed of representative institutions and the seed was quickened into life by the Act of 1909 and the Act of 1919 entrusted elected representatives of the people with a definite share in the government and pointed the way to full representative government which was subsequently provided in the Act of 1935.

**Legislative Councils and Indian members.**—The Indian Councils Act of 1861 for the first time associated with the Governor-General's Council a small number of additional members for the purposes of legislation and when this enlarged council met for this purpose, it was known as the Legislative Council. For the first time also, non-officials were associated with the government for not less than half were to be non-officials, who could be Indians as well. Councils for Madras and Bombay were likewise to have such additional members. The Governor-General was empowered to set up such councils for the North Western Provinces (Present Uttar Pradesh) and the Punjab and such councils were brought into being in 1886 and 1897 respectively. Functions of these councils was confined to legislation only. They were mere advisory bodies. They were not invested with deliberative powers. The Government could not be questioned on the floor of the House and the grievances of the public could not be considered by it. They could not make or take into consideration certain laws without the previous sanction of the Governor-General and the Acts passed by them (The local legislatures) could not be valid without the assent of the Governor-General in addition to that of the Governor's control of initiation and introduction of the Bills in the central legislature remained with the Governor-General; the assent of the Governor-General was required to the law passed by the legislature. Even then the law could be abrogated by the Queen. Thus these Legislative Councils



were neither representative nor responsible and its Indian members were only nominees of the executive head.

**Indian Civil Service.**—In 1861 the Indian Civil Service Act was also passed by which several appointments were reserved under the control of Secretary of State for India. The Institution of the I. C. S. popularly named 'Steel frame' was established and it was through it that foreign domination was continued in this country till 1946.

**High Courts 1861.**—By the High Courts Act of 1861 the Crown was empowered to establish by Letters Patent, High Courts of Judicature at Calcutta, Bombay and Madras, in place of the old Supreme Courts and Sadar Courts. The tenure of office of the Chief Justice and Judges was one 'during pleasure,' which tenure continued till the Constitution Act of 1935 came into force.

**Elected Legislature 1892.**—The Act of 1892 introduced the principle of election to the Legislative bodies. The Act of 1861 had provided for consulting Indian opinion in making laws and this experiment was found successful. Therefore, Indian Councils Act of 1892 provided that Viceroy could invite representative bodies to elect or select or delegate representatives of themselves and their opinions to be nominated to legislature. The number of additional members was increased to 16 from the original 'not less than six but not more than 12.' The provision was also made authorising the asking by the members of questions and discussion by them of the annual financial statements. In the words of Lord Morley "The Bill of 1892 admittedly contained the elective Principle. But the Reforms in their working showed a stage of development from which representative government was a far cry." The powers of these legislative bodies were illusory because the bodies that had to send their nominees were themselves of the Viceroy's choosing, the powers of the legislatures were very limited. Only such discussion could be had and such questions asked as the government liked or suffered. The executive had the final voice in the matter of initiation or passing the law ; its power remained supreme.



### The Minto-Morley Reforms, 1909.

**Direct election and greater power to legislature**—The Government of India Act 1909, better known as Minto Morley Act, introduced the principle of direct election to legislatures. It was the result of national awakening in the country which led to the rise of educated classes which claimed equality of citizenship with Europeans and conspired for a larger share in the administration of the country. The number of the additional members of the legislative councils was increased. The Governor-General's Council could have a maximum of 60 such members, the Councils of the Presidencies 50 and those of the Punjab and Burma 30. Instead of all being nominated, some had to be elected members. By the Acts of 1909 and 1912, non-official majority was required to be maintained in provincial councils, but an official majority was maintained at the Centre ; the councils were given right to discuss any matter of general interest in addition to asking of question and discussion of annual financial Statement. The resolution passed by the legislature on matters of general interests was merely advisory and it might not be accepted by the executive. However, the franchise for the election was very much restricted to certain classes only ; several public bodies like local boards were also given a right to send their representatives. Separate electoral right was given to Muslims and to secure representation of some minorities the government was authorised to nominate their representatives.

The Minto-Morley Reforms did more harm to the country than it led to a constitutional progress and establishment of representative government which it envisaged. The scheme of separate communal representation proved very costly to the country and it had sown seeds of discord between the Hindus and the Muslims, who had peacefully lived together until that day without any feeling of animosity towards each other ; the germs of two nation theory were sown, dividing India into two water-tight compartments which ultimately led to communal riots and partition of the country. *Lord Morley* himself had described these reforms in the following words :—

“If it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliament-

tary system in India, I for one, would have nothing at all to do with it."

No better criticism of the Minto-Morley Act can be made than what the Montagu-Chelmsford Report contains in the following words :

"But the reforms of 1909 afforded no answer, and could afford no answer to India's political problems. Narrow franchises and indirect elections failed to encourage in members a sense of responsibility to the people generally, and made it impossible, except in special constituencies, for those who had votes to use them with perception and effect. Moreover, the responsibility for the administration remained undivided ; with the result that while governments found themselves far more exposed to questions and criticism than hitherto, questions and criticism were uninformed by a real sense of responsibility, such as comes from the prospect of having to assume office in turn. The conception of responsible executive wholly or partially amenable to elected councils, was not admitted. Power remained with the government and the councils were left with no function but criticism....Responsibility which is the saviour of popular government was wholly lacking in these Councils ; it was felt that with this responsibility they must be invested ; they must have real work to do ; and they must have more people to call them to account for their doing of it."

However, the Indian public opinion was not satisfied with these reforms, and in order to satisfy the people for the first time an Indian Minister, *Lord Sinha* was appointed as law member of the Governor-General's executive Council and two Indian members were appointed to the Council of India in England.

The Government of India Act 1912 created a new province of Bihar and Orissa, and Assam was made a Chief Commissioner's province. It also established legislative council for the Chief Commissioner's province.

**Promise of Responsible Government, 1917.**—During the First World War Indian people showed great loyalty towards the Crown and they gave full support in men, materials and money

to the British Government for winning the war. At the same time nationalist feeling had risen high in the country and great dissatisfaction was visible all round in the educated classes against the foreign autocratic rule; there was a natural demand by the people of India for the establishment of the people's responsible democratic Government to carry out the administration of the country. Therefore, the British policy in India was declared in the House of Commons on the 20th of August 1917. This declaration is a land-mark in Indian Constitutional history and for the first time the British Government in unequivocal terms promised India a fully responsible government within the framework of the British Empire. This declaration stated that the whole of the British policy in India was that of increasing association of Indians in every branch of the administration and gradual development of self-governing institutions with a view to the progressive realisation of the responsible government in India as an integral part of the British Empire. In the declaration it was further provided that the Secretary of State for India will proceed to India to receive the suggestions of representative bodies and others as well as those of the Viceroy, the Government of India and the local governments; the constitution was to be framed after wide discussions and after taking the views of the representative bodies. In the House of Lords *Lord Curzon* summed up the reason for the declaration of 1917 in these words:—

“You cannot unchain the forces which are now loosened and are at work in every part of the world without having a repercussion which extends over every hemisphere and every ocean, and believe me, the events happening in Russia, in Ireland, in almost every country of Europe, the speeches being made about the little nations and the spirit of nationality have their echo in India itself.”

### **The Montagu-Chelmsford Reforms, 1919.**

**Responsible, government, Dyarchy.**—The Montagu-Chelmsford Reforms Act of 1919 was the result of the aforesaid declaration of 1917. It introduced the form of the dual government in India. It introduced the system of representative government in the Government of India and a partial system of responsible government in the provinces. The important

changes in the government of the country brought about by it were the following :—

- (1) **Central Government.**—It remained responsible to the Home Government, responsible to Parliament. It was not placed under the control of the Union Legislature. However, more members were henceforth to be appointed to the Viceroy's executive council from among the Indians and more Indians were to be appointed to positions of responsibility and in services. A Public Service Commission was to be appointed for recruitment to and control of public services in India. Central Legislature was to consist of the Governor-General and the Houses—the Council of States and the Legislative Assembly, the former consisting of 60 members, of whom not more than 20 could be officials, and the latter of 144 members made up of 103 elected, 26 nominated officials and 15 nominated non-official members. Although the legislature became representative body, it remained a merely consultative organ and its resolutions could be vetoed by the Governor-General and ultimate control of legislation remained with the Executive.
- (2) **The Provincial Government.**—The dual system was established in provinces. Governor's sphere of duties was divided into two parts, called reserved subjects and transferred subjects. The transferred subjects were local self-government, public health, sanitation, education, public works, agriculture, excise, registration, etc. ; these were to be administered by the Governor acting on the advice of the popular ministers. The reserved subjects consisted of all other provincial subjects and were to be administered by the Governor through his executive council. Ministers were appointed by the Government out of the elected members of the Legislative Council. Thus the beginning of the responsible government although on small scale was made. This system has been popularly known as Dyarchy.

Although the authors of the Montagu-Chelmsford Reforms Report were of the opinion that the communal electorates

were bad in principle and would delay the development of democratic constitution in India, yet they provided communal electorates not only for Muslims but also for Sikhs in the Punjab, the Indian Christians in Madras, and the Anglo-Indians in Madras and Bengal, and Europeans in the three Presidencies, the United Provinces and Bihar and Orissa. At the same time seats in the legislatures were also reserved for those communities. On account of the recognition of this principle of communal representation the day of India's independence was sought to be postponed on the pretext that the various communities could not agree as to their respective shares in the administration of free India. It also caused the partition in 1947 and led to immense suffering and bloodshed of the people. This policy consistently followed by the British Rulers from 1909, however, could not retard the independence of the country although its evil effects will always remain visible in the shape of divided India, which benefits not in the least our British Rulers of the by-gone days.

**Representative Government.**—The British people had an innate love for freedom and representative Government of the people which they had thoroughly imbibed from the Glorious Revolution in 1688, after paying a heavy price in wars and bloodshed for about a century. A nation imbued with such high ideals could not resist the claim of other nations to similar institutions. It is this spirit which is related in the various Royal proclamations which are imbued with a feeling for the prosperity and social advancement of the Indian people, and the notion of equality between the Indian people and other people of the British Empire.

**Queen Victoria's Proclamation 1858.**—The Royal Proclamation of Queen Victoria in 1858 contained the following historic words :—

“We hold ourselves bound to the Natives of our Indian Territories by the same obligations of duty which bound us to all our other subjects, and those obligations, we shall faithfully and conscientiously fulfil.

“And it is our further will that so far as may be, our subjects of whatever race or creed, be freely and impar-

tially admitted to offices in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge. We will that generally, in framing and administering the Law due regard be paid to the ancient rights, usages and customs of India.

“.....It is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer its government for the benefit of all our subjects residing therein.”

**Proclamation of 1908.**—King Edward's Proclamation of 1908 stated :

“.....Important classes among you, representing ideas that have been fostered and encouraged by British Rule, claim equality of citizenship, and a greater share in legislation and government. The politic satisfaction of such a claim will strengthen, not impair, existing authority and power. The administration will be all the more efficient.”

**King George's Proclamation, 1919.**—King George V's Proclamation of 1919 carries the following important message :—

“The act which has now become law entrusts elected representatives of the people with a definite share in Government, and points the way to full representative Government hereafter.

“The defence of India against foreign aggression is a duty of Common Imperial interest and pride. The control of her domestic concerns is a burden which India may legitimately aspire to taking upon her shoulders.”

“In truth, the desire after political responsibilities has its source at the roots of the British connection with India. It has sprung inevitably from the deeper and wider studies of human thought and history, which that connection has opened to the Indian people. Without it the work of the British in India would have been incomplete. It was, therefore, with a wise judgment that the beginnings of representative institutions were laid many years ago. This scope has been extended stage by stage

until there now lies before us a definite step on the road to responsible government."

"And, with all my People I pray to Almighty God that by His wisdom and under His guidance India may be led to greater prosperity and contentment and may grow to the fulness of political freedom."

### **Growth of Political Consciousness.**

The unification of the whole country under the British Crown, introduction of the Western education, revolutionising political thought and peoples' outlook on life and government in India, and the religious and social reform movements, initiated by Raja Ram Mohan Roy and Swami Dayanand, led to the development of political consciousness and yearning for democratic Government, among the people after 1858. Its effect was the Swadeshi movement and demand for Home Rule; the western thought gave us the new ideas of democracy, constitutional and representative government of the people by the people and for the people; the right to equality before the law was inculcated in the educated minds. From 1858 to 1919 is the period of Indian Renaissance in the thought, culture as well as religion. Sense of pride in the past was recovered by social reforms.

**Indian National Congress.**—In 1885 the Indian National Congress was established to represent and express public opinion and up to 1905 the Congress believed in firm support of the British Rule and advocated the winning of representative Government by constitutional means, holding that the British hardly wished to give representative Government to India. But the lack of sympathy for political aspirations of Indian people inflamed the newly awakened mind and Japan's victory over Russia heralded the regeneration of Asian glory and was regarded as a triumph of the Orient over the Occident. Thus in 1905 under the leadership of *Lokmanya Tilak* an extremist group of political thinkers was formed which believed in violence for seizing power from the British Government. The British Government in India embarked upon the policy of repression of the extremists and encouragement of the moderate political leaders. At the same time the indiscreet statements of

the responsible British politicians aggravated trouble in India and invited agitation from the people. *Lord Morley*, the Secretary of State for India, declared, "The furcoat of Canada would never suit the actual conditions of historical, cultural and psychological climate of India"; and *Lord Minto*, the Viceroy in 1910, announced that the western system of representative Government was inapplicable to India and would be uncongenial to the traditions of the Indians whose safety and welfare must depend upon the supremacy of British Administration and that no part of such supremacy could be delegated to any kind of representative assembly.

These declarations, contrary to the letter and spirit of the various Proclamations by the Queen and the Kings made the struggle of the Indian People for the right of self determination and representative government very keen in spite of repressions.

**Struggle for Home Rule and Mahatma Gandhi.**—At the beginning of the First Great War, the Indian people asserted a claim for Dominion Status and under the leadership of Anne Besant a movement for Home Rule was launched. The Imperial Government accepted the principle of the establishment of responsible government by its historic announcement of 25th August, 1917 :—

"It is the declared policy of Parliament to provide for the increasing association of the Indians in every branch of the Indian Administration, and for the gradual development of self-governing institutions, with a view to progressive realisation of responsible government in British India as an integral part of the British Empire."

**Non-violence Movement 1920.**—At the same time Mahatma Gandhi made his dynamic appearance on the political horizon of India. His personality, blended with keen vision, strong resolution and a determined faith in the justice of India's cause and in the power of truth and non-violence, revolutionised the Indian political thought in its end as well as the means. The reforms of 1919 did not satisfy the political aspirations of any party in India ; the Congress rejected them. After the Rowlatt Bill, Mahatma Gandhi, the supreme leader of the Congress now, launched Satyagrah Movement ; all the



throughout India responded to his call in unprecedented measures. The then Government resorted to ruthless suppression and Mahatma Gandhi with all the leaders in the country as well as thousands of people were sent to jails.

Now it was revealed that there was a mass awakening throughout the country and the people as a whole were on the move. The congress was transferred from a Bourgeois Organisation of the intellectuals to a mass-organisation with a new technique suited to the oriental conditions. While Mahatma Gandhi led the non-cooperation movement of 1920, the council boycott, and the civil disobedience movements, a group of Congressmen under the leadership of Pandit Motilal Nehru and Chittaranjan Das decided to fight the Government from within the Legislative Councils.

In 1928 the Congress passed a resolution demanding full Dominion Status by the end of 1929.

The British statesmen, gifted with real foresight and true imagination and nurtured in democratic principles, were quick to grasp the significance of conditions in India, and the British Government declared its intention through the Viceroy's announcement on October 31, 1929, "I am authorised on behalf of His Majesty's Government to state clearly that in their judgment, it is implicit in the declaration of 1917 that the natural issue of India's Constitutional progress as there contemplated is the attainment of Dominion Status...." For this purpose the Simon Commission was despatched to India to study conditions for a fully responsible Government. As no Indian was appointed its member, it was boycotted by the Congress. Hence the British Government called a Round Table Conference of Indian leaders of different shades of opinion as well as the princes with a view to evolve a Constitution for responsible Government.

**Demand for Independence 1930**—As there was no guarantee by the British Government that the Conference would meet for the framing of a Dominion Constituion, the Congress did not accept the proposal for conference, and at the Lahore session in December, 1929, the Congress under the Presidentship of Pandit Jawaharlal Nehru, passed a resolution for complete Independence. Further, the Congress started a Civil Disobe-

dience movement in 1930 to force the hands of the British Government. It resulted in the Gandhi-Irwin Pact of 1931 whereby Mahatma Gandhi agreed to attend the Round Table Conference as the sole representative of the Congress.

The Round Table Conference agreed about Federal constitution but did not achieve any solution of the communal question and Mahatma Gandhi returned home. On his return he was arrested and the Government tried to suppress the Congress by repression. On the failure of the second Round Table Conference, Mr. Ramsay Macdonald gave the 'communal award' and the Government of India Act of 1935 was passed by the Parliament. The Act has not satisfied any party in this country and although the Congress also agreed to work it out, it condemned its scheme and was persistent in its demand for full freedom for the country.

**The Government of India Act, 1935.**—Territorially Burma and Aden were separated from the Indian Empire.

The Act is the first attempt to establish a constitution for the whole country, including the princely States. The Central Government was to be a federation, constituted of the Provinces as well as the Indian States; it was to be a dyarchy as the reserved subjects like defence, foreign relations, ecclesiastical affairs etc. were to be administered by the Governor-General in his discretion as the Executive Head who was not responsible to the Legislature in these spheres, nor was he to seek the advice of Ministers but the rest of the subjects were transferred subjects to be administered by the Ministers and the Ministers were responsible to the Legislature. However, Finance was partially administered by the Governor-General in his discretion and partially by the Federal Ministers. Nearly three-fourths of the total expenditure concerned the departments directly in the hands of the Governor-General and ministers had no hand in it. The Federal Railway authority or the Railway Board was to administer the Railways and the Legislature had no control over it. Indian Services like the Indian Civil Service, Indian Police Service and Indian Medical Service, etc. remained in the hands of the Secretary of State for India, and the Federal Government could not deal with it. The Chief Commissioner's Provinces were to be governed by the Governor-General.

The control of the Secretary of State over the Federal Government continued unchanged under section 314 of the Act, but in the matter of provinces now his functions were altered by provincial autonomy ; the responsibility of the Secretary of State to the Parliament remained as before. The Parliament remained the Sovereign authority to which the Government of India remained legally subordinate.

At the Centre was created a bicameral Federal Legislature consisting of the Federal Assembly and the Council of States with the elected representatives from the Provinces and nominated members from the Indian States. The election was direct through the Legislatures in Provinces, and separate electorate and seats were created for Muslims ; seats were also reserved for the Scheduled Castes. The Assembly had 250 elected members from Provinces and not more than 125 nominated members from the Indian States. The Council of States was to consist of 104 nominees of the princes and 56 members elected from the Provinces directly from territorial Constituencies. Both the Houses were given equal powers except that money bills must originate in the Lower House.

The powers of the Central Legislature in matters of finance were limited and it has to give way to the wishes of the Governor-General ; every matter was not open to its vote.

The Governor-General was vested with very wide powers. He was to select the Ministers and to dismiss them according to his discretion. He might or might not follow the advice of Ministers. He was vested with special responsibility in the matters of financial stability and credit of the Federation, Services, discrimination against British Companies or individuals or against British or Burmese goods, protection of the rights of the States and other Rulers.

The Indian States were left free to join the Federation or remain outside ; it was left to the will of the Ruler who was to execute an Instrument of Accession declaring that he acceded to the Federation with a view that the King, the Governor-General, the Federal Legislature, the Federal Court and the Federal Authorities should exercise in relation to his state such powers as were to be mentioned by him in the Instrument of Accession. Such an arrangement was doomed to failure and

as a result of this provision the Federation never came into existence.

The creation of the Federation led to the creation of a Federal Court also in order to adjudicate upon disputes between States *inter se* and also between the Federation and the States. It was also given appellate jurisdiction over High Courts. From its decision appeals lay to the Privy Council. For the recruitment to services Public Service Commissions were established at the Centre as well as in the Provinces.

In the Provinces, the Government of India Act, 1935 established full autonomy; all the subjects were given into the hands of the Ministers who were responsible to the Legislature and the Governor had a Constitutional Head's position. Although the Act did not mention a Prime Minister for the Province or the principle of collective responsibility but it was left to be established by conventions.

However, the Act has provided numerous safeguards, by imposing special responsibilities upon the Governors and by investing them with special powers. Thus the reforms were to a great extent whittled down and the germs of autocratic rule by the Governor are to be found in the Constitution. Section 52 made the Governor specially responsible for the peace and tranquility of the Province, protection of minority communities, public services, the rights to dignity of Indian Rulers, Excluded Areas. When peace was in danger he could take over the administration from a Minister; under section 93 he could suspend the constitution and dissolve the Ministry on his being satisfied that the Government of the Province could not be run in accordance with the provisions of the Act. He could make special Laws and Ordinances. His assent to Bills passed by Legislature was necessary. Thus the provincial autonomy could be merely illusory and the Governor's power remained undiminished.

The Provinces have elected Legislatures. Some of them have got bicameral Legislatures, consisting of a Legislative Assembly and a Legislative Council; others have only a Legislative Assembly. Both the Houses are elected bodies but in the Council the Governor can nominate. The principle of Communal

Representation was continued ; seats for various communities and women were allocated. Franchise was very limited.

A Legislative Bill could be initiated in both Houses except Money Bills which must originate in the Lower House.

The Act was condemned by all sections of the public in India who were disappointed at not granting Dominion Status in spite of the declarations of the Crown. The Federation did not give complete responsibility to the people at the Centre and in the Princely States autocracy of the Ruler continued. The agreement of the Rulers to Accession to the Federation was meant to torpedo the Constitution for the Federation. Federation was not to be a Sovereign body; it was subordinated to the Crown in England and the British Parliament. Under it arbitrary weightage was given to the States in the matter of representation in the Legislatures. Franchise was very limited. The Constitution was full of reservations and safeguards to be exercised by the Governors and Governor-General and their special powers could make the bounds of democracy illusory. The Communal Award had the effect of dividing the country into Hindu India and Muslim India.

At the same time it was a very rigid Constitution ; it could be amended only by the British Parliament. Although the Act was not appreciated by the popular opinion, a large number of its provisions have proved useful for the Constituent Assembly which incorporated a good number of these into the Constitution of India.

### **The era of limited Constitutional Government and struggle for freedom.**

Under the Act of 1935 the Provincial Autonomy was introduced although the Federation could not be established as no agreement could be reached with the Princes. General elections were held in the Provinces and the Congress secured absolute majority in the U. P., C. P., Bombay, Madras, Bihar and Orissa and formed Ministry in July, 1937, after the Viceroy gave assurances that the Governor could not use his special powers or responsibilities or set aside the advice of his Ministers.

With the declaration of European War on 3rd September, 1939, the Congress declared that it would support the War only if the British applied the principle of a nation's right to self-determination to India as well. The Viceroy, on 18th October, 1939, declared that Dominion Status was the ultimate goal of India but her claim to it would be considered after the war ; he was not even prepared to give declaration for complete independence after the war. On 7th August, 1940 the Viceroy offered that after the war immediately a body consisting of all political parties' representatives would be set up to decide the framework of the new Constitution, but the British Government would maintain its responsibilities for the minorities, the States, the Depressed classes, etc. No political party in India was prepared to accept it. Therefore, the Ministries resigned and a political deadlock began. Most of the Provinces were ruled by the Governor under Section 93 of the Act of 1935.

In the summer of 1942 war came nearer India ; Japan had conquered Burma, Malaya and the Indian National Army of Subhas Chandra Bose was preparing to attack India after the rains. Therefore, the British Government tried to win over all political parties in India and sent Sir Stafford Cripps with an offer.

**The Cripps Offer 1942.**—The Cripps offer declared that entire India was to be a Dominion in internal as well as external affairs and after the war its constitution was to be framed by an elected body and it will be accepted by the British Government. But any Province could choose to remain out of the Union of India and it could then frame its constitution. By a treaty between India and Britain rights of racial and religious minorities were to be protected. Treaty arrangements between the Crown and the Indian States would be reviewed in view of the altered constitutional set up. The Constituent Assembly was to consist of (i) members elected by the Legislative Assemblies in provinces on the principle of proportional representation, having nearly 1/10th of the members of electors as its members ; (ii) members from States nominated by Princes in proportion to the population strength of the States to British India as a whole.

It was an important constitutional step inasmuch as it recognised the right of India to Dominion Status and self-determination and the principle of Sovereign Constituent Assembly. But the plan was rejected by the Congress because it did not grant responsible Cabinet Government at the Centre even without Defence during the war, and the veto of ministerial decisions was to continue and the India Office was also to have control of Indian affairs in London. At the same time the States representatives were to be nominated by the Princes and the Princes or States might choose to remain out of the Union of India. The Hindu Mahasabha rejected the plan as it struck against the integrity of India. Muslim League rejected it because their claim to separate Union of Muslim majority provinces was not recognised.

**Movement of 1942.**—The political deadlock continued ; the British Government tried to repress the Indian National Congress and arrested all the leaders. It resulted into mass movement which took even violent shape ; repression was resorted to for two years.

**Cabinet Mission 1946.**—After the end of the war in 1945, the new Labour Government in Great Britain tried to end the political deadlock ; a Parliamentary Delegation of eight persons came to ascertain the view of the leaders. Thereafter the British Government sent the Cabinet Mission, consisting of Lord Pethick Lawrence, Sir Stafford Cripps & Mr. A. V. Alexander in March 1946. After meeting the leaders, it published its plan, known as the Cabinet Mission plan on 16th May, 1946. According to it there was to be an undivided Indian State with a Union Centre, the Provinces and intermediate authorities for three groups. India was divided into three groups ; Bombay, Madras, C. P., U. P., Bihar and Orissa were in Group A ; the Punjab, N. W. F. P. and Sind were in Group B ; and Bengal and Assam were in Group C. A sovereign Constituent Assembly was to frame the Constitution ; it was to consist of provinces' representatives, elected by their Legislatures from among the Muslims, Sikhs and general members in proportion to their strength in the Provinces. The Constituent Assembly would split up into the three groups, mentioned above to frame a Constitution for the groups, if necessary, and for the Provinces.



The Constituent Assembly was also to decide whether to remain a part of the British Commonwealth. For the interim period an interim Government was to be set up immediately at the Centre.

The Congress accepted the plan, but the Muslim League rejected it as it did not satisfy its demand for Pakistan. Under the leadership of Pt. Nehru an interim Government was formed at the Centre on September 2, 1946. The Muslim League did not join and conducted countrywide violent demonstrations. But in October 1946 the Muslim League also sent its five representatives to the Cabinet. The League obstructed the constitutional progress of the plan. No compromise between the League and the Congress could be arrived at in spite of Mr. Attlee's declaration on February 20, 1947 that the British Government would withdraw from India by the end of June 1948 at the latest by handing over power to the authority under the newly drafted Constitution, and if no such constitution or authority comes into being, then to the Central Government in power or to the existing Provincial Governments. This declaration worsened the situation and the Muslim League created violent disturbances in Bengal, U. P. and Punjab. Ultimately the Congress and the League decided upon accepting partition of the country into India and Pakistan. The Parliament passed the Indian Independence Act on 15th July, 1947.

**The Indian Independence Act 1947.**—The Indian Independence Act created two independent Dominions, India and Pakistan. Pakistan was to consist of the territories of East Bengal, West Punjab, Sind, British Baluchistan and North-West Frontier Provinces, if the voters of those areas by referendum decided to join Pakistan; Indian States were left free to accede to either India or Pakistan and paramountcy of the Crown over them lapsed. From 15th August, 1947, British rule in the whole of India was to end. It made provision for interim period also. The Constitution was to be framed and adopted. It created a Constituent Assembly for India by excluding the representatives of Pakistan territory from the Constituent Assembly formed under the Cabinet Mission Plan.

By the statesmanship of Sardar Vallabh Bhai Patel and wisdom of Lord Mountbatten all Indian States acceded to India



before 1950, and many of them even merged with the provinces. Several small states formed Unions with bigger states or among themselves. In a few years several hundreds of small states were converted into a few unions, convenient for administration. It facilitated the task of Constitution makers.

**The Constituent Assembly of India.**—It held its first meeting on 12th December, 1946 when Pandit Nehru moved Objectives Resolution which was adopted on 22nd January, 1947 declaring as follows :

“(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent Sovereign Republic and to draw up for her future Government a Constitution ;

(2) Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all ;

(3) Wherein the said territories whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and exercise all powers and retain the status of autonomous units, together with residuary powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom ;

(4) Wherein all powers and authority of the Sovereign Independent India, its constituent parts and organs of government are derived from the people ;

(5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political ; equality of status, of opportunity and before the law ; freedom of thought, expression, belief, faith, worship,

vocation, and action subject to law and public morality ;

(6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes ; and

(7) Wherein shall be maintained the integrity of territory of the Republic and of its sovereign rights on land, sea, and air according to justice and law of civilised nations, and this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

The broad principles of our Constitution are in conformity with the above Objectives Resolution, but owing to partition the principle of integrity could not be maintained.

The Constitution was drafted by the Drafting Committee consisting of eminent constitutionalists like Dr. B. R. Ambedkar (Chairman), Sir Alladi Krishanswami Ayyar, Sir N. Gopalaswami Ayyanger, Syed Md. Sadullah, Sir T. T. Krishnamachari, Sri K. M. Munshi, Sir N. Mahendra Rao. Dr. Rajendra Prasad was elected the President of the Constituent Assembly.

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# THE PREAMBLE

**WE, THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a **SOVEREIGN DEMOCRATIC REPUBLIC** and to secure to all its citizens :

**JUSTICE**, social, economic and political ;

**LIBERTY** of thought, expression, belief, faith and worship ;

**EQUALITY** of status and of opportunity ;  
and to promote among them all—

**FRATERNITY** assuring the dignity of the individual and the unity of the Nation ;

**IN OUR CONSTITUENT ASSEMBLY** this twenty-sixth day of November, 1949 do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

## PREAMBLE

**Preamble.**—The Preamble is the soul of the Constitution, and the ever kindling spirit behind it. It indicates the general purposes for which the people ordained and established the Constitution ; it cannot be regarded as the source of any substantive power conferred on the Government of India or on any of its States. Such powers are expressly or impliedly granted in the body of the Constitution. However, if any doubt arises as to the interpretation of any Article of the Constitution, then, according to Chief Justice Dyer,<sup>1</sup> the Preamble is “a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress.” In case of ambiguity it is the guide to point out the direction which the people of India have set forth as the goal of their destiny.

The importance of the Preamble can be understood from the following words of Lord Chief Justice Tindal<sup>2</sup> :—

“My Lords, the only rule for the constitution of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law giver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble.”

The above principles were enunciated by Patanjali Shastri J.,<sup>3</sup> in the following words :

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1. *Stowel vs. Lord Zouch*, (1797) Plowden 353 (369)=75 E. R. 536.
  2. *Sussex, Peerage case* (1844) 8 E. R. 1034 (1057).
  3. *Gopalan vs. State of Madras*, A. I. R. 1950 S.C. 27 (72)=1950 S.C.R. 88.

"There can be no doubt that the people of India have, in exercise of their sovereign will as expressed in the Preamble, adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality, and in delegating to the Legislature, the Executive and the Judiciary their respective powers in the Constitution reserved to themselves certain fundamental rights, so called, I apprehend, because they have been retained by the people and made paramount to the delegated powers, as in the American model. Madison (who played a prominent part in framing the first Amendment of the American Constitution) pointing out the distinction, due to historical reasons, between American and the British ways of saving the great and essential rights of the people observed : 'there they are served not by laws paramount to prerogative but by constitutions paramount to laws' ; (Report on the Virginia Resolutions, quoted.) This has been translated into positive law in Part III of the Indian Constitution, and I agree that in construing these provisions the high purpose and spirit of the Preamble as well as the Constitutional significance of a Declaration of Fundamental Rights should be borne in mind. This, however, is not to say that the language of the provisions should be stretched to square with this or that constitutional theory in disregard of the cardinal rule of interpretation of any enactment, constitutional or other, that its spirit no less than its intendment should be collected primarily from the natural meaning of the words used."

The Preamble to the Constitution of India is, *inter alia*, based on the famous Declaration of American Independence, 1776, Preamble to the Constitution of the United States of America, 1787, Preamble to the Constitution of Eire, 1937, and Preamble to the Constitution of Burma, 1948.

The Declaration contained in the Preamble indicates that the source of the Constitution is the People of India ; true sovereignty lies in them. For the good governance of their

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1. *Near vs. Minnesota*. (1931) 75 Law Ed. 1357 (1366)=283 U. S. 697 (714).

motherland, through their representatives in their Constituent Assembly they have adopted, enacted and given to themselves this Constitution. The sanction behind the Constitution is the free will of the people of India. It is a Constitution made by the people, for the people, and of the people. The Constitution was made by a Sovereign People without any external authority, interference or domination. The members of the Constituent Assembly also represented directly the people and not the different states or provinces.

**Sovereign Democratic Republic.**—The Preamble sets forth the solemn resolution of the people of India to constitute India into a Sovereign Democratic Republic. Under this Constitution, India has become a Republic, that is, there is no monarch, and the Ruler as well as the ruled are the people themselves. There exists none superior to the people and it is their will which is to reign supreme in the land and which is to appoint the Head of the State. The Republic is a sovereign body, having none above it, exercising all the powers of Sovereignty uncontrolled and unchecked by any other authority. It is a Democratic Republic in the sense that the government is by the people either directly or indirectly through their elected representatives. Under the Indian Constitution, the Sovereignty of India is a single and undivided Sovereignty, vested in the Republic as a whole and here it is unlike the Constitution of the United States of America in which Sovereignty is divided between the Union and the States.

The Declaration by India at the Prime Ministers' Conference in London in April, 1949, that she will remain a full member of the Commonwealth of Nations and her acceptance of the King of England to be the Head of the Commonwealth as the symbol of the free association of the independent States is not inconsistent with her fully sovereign status nor does it compromise her position as a Republic. The declaration itself says that the Commonwealth of Nations is to be the free association of independent nations which means that membership is voluntary and no obligation attaches to it, and the independence of members is not jeopardised. The King of England is accepted as the head of the Commonwealth. Benefits have accrued to the citizens

of India in many respects, such as residence and following professions in England, entry into British Parliament, holding offices, and they are to be treated in England on the same footing as citizens of Canada or Australia in England.

**Justice, Liberty Equality, and Fraternity.**—The Preamble states the objects for which the Republic is created and which the Constitution and the Government established under it are to achieve. They are the aims and ideals of the Constitution, and are expressed by the words, 'Justice', 'Liberty', 'Equality', 'Fraternity', which are the blessings of a Republic to be bestowed on the People of India. The Directive Principles of State Policy which are set forth in Part IV of the Constitution also contain similar aims and objectives in greater details. The Preamble and the Directive Principles made it clear that the object of the Framers of the Constitution was to establish a 'Welfare State', and not be contented with a mere 'Police State' or a 'Laissez Faire State'. According to the Supreme Court of India the Constitution reflects the tendency of modern civilization to shift the emphasis from the individual to the community, but the Constitution has not ignored the individual but has endeavoured to harmonize the individual interest with the paramount interest of the community.<sup>1</sup> Thus the Constitution protects the freedom of the citizens' person as well as property under Articles 19 and 31 but at the same time it empowers the State to impose reasonable restrictions on them or even to deprive a person altogether in the interest of the community as a whole. According to the Preamble the liberty of thought, expression, belief, faith and worship are secured to all citizens and in the body of the Constitution also provisions are made for the same in Part III on Fundamental Rights. But all these freedoms are subject to the interest of the State or general public or public order or morality, and the moment these freedoms become incompatible with and threaten the freedom of the community, the individual can be deprived of them by the State. Thus the Constitution has struck a balance between the rights and privileges of the citizen and the powers of the Government; it has accommodated and defined the spheres of operation of the two competing doctrines, namely, the right of the individual citizen to life, liberty and property and the power of the State to

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1. *State of Bihar vs. Kameshwar Singh*, A. I. R. 1952 S. C. 252 (Pr. 106)= 1952 S. C. R. 889 (1020, 1056).

impose restrictions on the exercise and enjoyment of these rights in the interests of good government and the welfare of the State as a whole.<sup>1</sup>

**Social, economic and political justice.**—The Preamble sets forth social, economic and political justice to be secured to all citizens as a clear objective to be achieved by the Republic and in this respect it is true to the Gandhian principles of justice providing for equal partnership between the rich and the poor, with the rich holding his property as a trustee for the good of the society. It aims at establishing socialistic pattern of society.

**Liberty of thought, expression, belief, faith and worship.**—The second salient feature of the Preamble is that the liberty of thought, expression, belief, faith and worship is secured to all citizens. In this respect the Republic is really democratic and differs fundamentally from a totalitarian state; it has not only the form but also the spirit of true democracy. It is a guarantee against a blood-stained revolution for overthrow of a government, and it makes possible the transfer of political power from one party to another peacefully by the free expression of the peoples' will at elections. The State will be secular in all respects, giving no preference to any particular religion.

**Equality.**—The third salient feature of the Preamble is that the Constitution is to secure to all its citizens equality of status and of opportunity. Thus all citizens are equal in the eye of the State which is not to make any distinction between man and man and the abolition of all inequalities in point of wealth, welfare, work, opportunity etc. is assured, thus bringing real socialism by peaceful process and establishing Ram Rajya !

**Dignity of Individual Unity of the Nation.**—The fourth salient feature of the Preamble is that the Constitution is to secure to all its citizens such Fraternity as will assure the dignity of the individual as well as the unity of the Nation. Thus it aims at the full development of an individual citizen in all directions, establishing social concord and harmony and thereby assuring unity of the whole nation. Here is the synthesis of

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1. *Dorairajan vs. State of Madras*, A. I. R. 1951 Mad. 120 (130)=I. L. R. (1951) Mad. 149 (F.B.)



individualism with nationalism consistent with the modern theory of Social welfare State. It further shows that the security of the State and the idea of national unity has been foremost in the minds of the authors of the constitution and nothing was allowed to jeopardise the hard-won freedom of the country after centuries of foreign rule.

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## PART I

### THE UNION AND ITS TERRITORY

**India and Bharat.**—The name of the Union is India, that is Bharat (Article 1). There was much controversy in the Constituent Assembly about the selection of name. Ultimately a compromise was arrived at on the basis that the English text should contain the word 'India' that is 'Bharat' and that in the Hindi and other Indian language texts, the name 'Bharat' should come first and 'India' after-wards. Retention of the old name, India with its historical background and territorial extent, is to remain a symbol for natural unity between the peoples of our country and Pakistan, the seceding territory, which may some day be realised as an accomplished fact. Even in International field the word, 'India' with its past heritage, is so well known that a change of name would have only created confusion.

**The Union.**—The Constitution provides that 'India' shall be a Union of States (Article 2). The word, 'Union' has been deliberately chosen, and the word 'federation' or 'confederation' was not accepted. The word 'Union' has been taken from Preamble to the British North America Act, 1867. The word 'Union' has also been used in the Preamble to the Constitution of the United States of America. The expression, 'Union of States' indicates that the constitution is a federation, but the States the component units, cannot secede from it. It is not a federation based on any agreement among the States, like the Constitution of the United States of America, under which each State has an independent existence, and might continue to exist disunited even in the absence of the Union.

Unlike the federation under the Government of India Act, 1935, the Constitution provides a uniform political system for the whole country, the British India Provinces and Indian States, and thus weaves the entire country into an organic whole. The Constitution is not based on any agreement between various states and provinces, but it was framed by the

representatives of the people of India as a whole. It provides both for the Union as well as the component States. It recognises only one form of citizenship for the entire country and not a double citizenship, one for the Union and the other for the States, as in the Constitution of the United States of America. Further, the Executive of the Union is empowered to give necessary directions to the States (Article 257), and it can delegate the Executive Power of the Union to a State under Article 258. The residuary legislative power is vested in the Union under Article 248 as under the Canadian Constitution and unlike under the Constitution of the United States of America. In certain cases the Union authorities can supersede the State authorities under Articles 356 and 365. The Union Parliament can admit or establish new State and alter the boundaries and area of the existing ones under Articles 2 and 3. Even in the Council of States, representation is not on the basis of equality of States, but on the strength of population. A strong federal authority is established.

In spite of the aforesaid powers in the Union, the States are not mere administrative units acting as agents of the Centre ; they are entrusted with the exclusive administration of affairs within the spheres allotted to them by the Constitution. Thus the Constitution has the features of a federation also but it cannot be said to be a federation in the strict sense, like the Constitution of the United States of America, or the Constitution of Australia under the Commonwealth of Australia Act.

**State.**—The Constitution-makers have chosen the word 'State' in place of 'Province' in order to bring both into harmony. This word is to cover both the Princely Indian States as well as the British Indian Provinces, and the Constitution weaves them into an organic whole without any distinction. The concept of the Princely States in India with their peculiarities and semi-autocratic character is now only a historical phenomenon lost in the national tide sweeping India from Kashmir to Cape Comorin. Strictly speaking, the word, 'State', is not apt according to the definition in jurisprudence which recognises State as a political community of free citizens occupying a territory of defined boundaries and organised under a government with its own constitution. The British Indian

Provinces never enjoyed this status, and the States joining the Union of India do not have such position under the Constitution. However, in a political sense and in view of Article 2, it is most befitting and also conducive to the enlargement of the country by Union of other States voluntarily in future and if ever such an occasion may arise, there will be no need to make any fundamental change in the Constitution. It is the selection of these words "Union of State" which had made possible the arrangement with Kashmir by which the latter while maintaining its identity had yet voluntarily become a part and parcel of the Union.

**Territory.**—The territory of India comprises (i) the territory of the States, (ii) the Union Territories, and (iii) such other territories as may be acquired. These States and Union Territories are mentioned in the First Schedule to the Constitution. Before the Seventh Amendment to the Constitution, the territories of India comprised (i) the three types of States mentioned in Part A, Part B and Part C of the First Schedule of the Constitution, (ii) the territories specified in Part D of the First Schedule, and (iii) such other territories as may be acquired.

The Constitution recognises the legality of acquiring new territories for the Union, and it does not specify any particular means by which alone such acquisition is recognised as legal or constitutional.

**Admission and Establishment of new States.**—Article 2 provides that Parliament may by law admit into the Union or establish new States on such terms and conditions as it thinks fit. Thus the areas under foreign rule within the geographical limits of India may be acquired and formed into new States without amending substantially the Constitution. Even areas within the Union which are not enjoying the status of a State may be converted into a State. The Constitutional position of a newly admitted or established State will depend entirely on the terms and conditions imposed by the Parliament by legislation. Thus there is no right of equality among the constituent States of the Indian Union. It is unlike the American Constitution under which on admission a new State stands on an equal footing with the original States in all respects.

In this respect the Indian Constitution is more elastic and can readily induce others to join the Union on terms which may suit them.

**Formation of new States and alteration of areas, boundaries or names of States.**—The Parliament can form a new State by separation of territory from any existing State or by uniting two or more States or parts of States or by uniting to a part of any State. The Parliament can increase or diminish the area of any State and alter its boundary as well as name. Any Bill for this purpose in either House of Parliament is to be introduced only after the recommendation of the President of India. If the proposal in such Bill affects the boundaries of any State or States or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States shall be ascertained by the President of India before giving his recommendation for introducing the Bill in Parliament (Article 3). The Andhra State Act, (30 of 1953) is an instance of such an Act for forming a new State out of an existing State, and the Assam (Alteration of Boundaries) (Act 47 of 1951) is another Act to alter the boundaries of a State.

Article 4 provides that any law made by Parliament for the admission, establishment or formation of new States, the alteration of areas, boundaries, or names of any existing State shall contain provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law, and may also contain such supplemental, incidental and consequential provisions (including provision regarding representation in Parliament and in the Legislature or Legislatures of the State or States affected thereby) as the Parliament may deem necessary. No such law shall be deemed to be an amendment of the Constitution for which Article 368 makes provision for special procedure. Thus a simpler procedure is prescribed for this purpose.

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## PART II

### CITIZENSHIP

'Before man made us citizen, great Nature made us man', said James Russell Lowell. The State consists of all the men within its territory, and its laws govern them all. They have claims to the protection of the laws and government and they owe obedience to them. But citizens are those who by reason of their personal and permanent relationship to the State possess higher privileges and receive from the State special rights and privileges, civil and national and owe allegiance to the State or a special duty of assistance, service, obedience and fidelity, and a duty to abstain from treasonable acts ; they are the nationals of the State. There is reciprocal obligation between the citizen and the State. The citizen has certain rights and obligations under the Constitution which is denied to non-citizens. The State protects the citizens and provides facilities for their welfare and the citizens in turn owe allegiance to it and are liable to public duties and services in the interest of the State. The citizens are entitled to Fundamental Rights guaranteed to them under the Constitution. Above all, they are the government to govern the country through the representatives, and peace and prosperity lies in their hands. In democracy citizenship has a special significance.

**Citizenship at commencement of the Constitution.**—The Constitution has determined as to who shall be the citizens of India. Article 5 provides that every one who has his domicile in the territory of India at the commencement of this Constitution shall be a citizen of India, if he himself, or either of his parents was born in the territory of India, or if he has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution *i.e.*, (26th January, 1950). The test of domicile is very important. Prof. Dicey in "Conflict of Laws" has defined "domicile" as follows :—

"The domicile of any person is, in general, the place or country which is in fact his permanent home but in some cases the place or country, which, whether it be in fact his home or not, is determined to be his home by a rule of law."

**Persons migrating from Pakistan.**—Article 6 extends the right of citizenship to person who is not covered by Article 5, but has migrated to India from Pakistan territory. Such person shall be deemed to be a citizen of India at the commencement of the Constitution, on fulfilling the following conditions :—

(a) He or either of his parents or any of his grand parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) ; and

(b) (i) if he migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since his migration, or

(ii) If he migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India before the commencement of this Constitution, by an officer appointed in that behalf by the Government of the Dominion of India after having resided in the territory of India at least for six months.

The aforesaid special provision was made owing to mass migrations which took place on account of the division of the country into two separate States. Like Article 5, this Article 6 is also limited in its application to the commencement of the Constitution (26th January, 1950) and deals with citizenship on that date.

**Migrants to Pakistan.**—Article 7 is an exception to Articles 5 and 6, and it provides that a person who has migrated to Pakistan from the territory of India after March 1, 1947, shall not be deemed to be a citizen of India. But if such a person, after migration from India to Pakistan, has returned to India under a permit for re-settlement or permanent return issued by or under the authority of any law, he shall be deemed to have migrated to the territory of India after July 19, 1948, and shall be deemed to be a citizen of India in accordance with Article 6 (b) (ii). But in case of the State of Jammu and Kashmir nothing in this Article shall apply to permanent resident of the State of Jammu and Kashmir who after having migrated to Pakistan returns to that State under a permit for re-settlement or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India.

**Indians residing outside India.**—The Constitution has made provision in Article 8 for the rights of citizenship



for the persons of Indian origin who are residing outside India. It extends the citizenship conferred by Article 5, and relaxes the qualification for citizenship prescribed by Article 5. Under this Article a person shall be a citizen of India if he fulfils the following conditions :—

(1) He was born in India as defined in the Government of India Act, 1935 (as originally enacted) or either of his parents or any one of his grand parents was born in India as so defined.

(2) He was ordinarily resident in a country outside India as so defined.

(3) He has been registered as a citizen of India by the diplomatic or consular representatives of India in the country of his residence on his application in prescribed form, whether before or after the commencement of the constitution.

**Loss of Indian citizenship and acquiring foreign citizenship.**—According to Article 9, a person cannot remain a citizen of India if he has voluntarily acquired the citizenship of any foreign State ; it will automatically lead to the loss of Indian citizenship. The expression foreign State is defined under Article 367 (3) according to which for the purposes of the Constitution it means any State other than India except a State which has been declared by the President not to be a foreign State for any particular purpose or purposes. Under Article 367 (3) the President has passed the Constitution Declaration as to Foreign States, Order, 1950, whereby, subject to any law to be passed by Parliament, every country in the Commonwealth has been declared not to be a foreign State.

**Parliament's Power to make laws for citizenship.**—Articles 10 and 11 of the Constitution empower the Parliament to make laws in respect of the acquisition and termination of citizenship and matters related to it, and every person who is deemed to be citizen of India under Articles 5 to 8 shall continue to be a citizen of India subject to the provisions of any law that be made by the Parliament. Thus the Parliament can make laws to place restrictions even on citizens in the matter of entering Indian territory. The power granted to Parliament is very



wide and any provision made by the Parliament may be even different from that of the constitution. The Parliament has already passed the Indian citizenship Act.

Although India is a Federation, there is no dual citizenship as in the United States of America. There is only one citizenship of the Union and there is no citizenship of each State. This principle ensures greater unity and consolidation of the Indian nation, and strikes at the root of provincialism. The demoralising effect and centrifugal tendencies of double allegiance have been wisely avoided. It ensures similar rights, privileges, and obligations of the citizens throughout India. Single citizenship flows from the Sovereignty in India being vested in the People of India.

Two-fold origin and character are assigned to Indian citizenship. The citizen must have both the qualifications of Indian birth and domicile. The principle of Indian birth or descent is applied in the case of those who are domiciled in India at the commencement of the constitution. In this respect the constitution has adopted the English doctrine of '*Jus Soli*' i. e. place of birth as the controlling factor for citizenship. Mere change in residence, even permanently, to a foreign country, will not deprive a person of Indian birth of his citizenship, unless his intention is proved to be for a change of his domicile as well.

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## PART III

### FUNDAMENTAL RIGHTS

#### CHAPTER I

##### General.

**General.**—The guarantee of Fundamental Rights of man is the corner stone of modern democracy ; it prevents the government by many from becoming the despotism of many, and it stands as a bulwark against the tyrannies and abuses by a regime of the future. The early history of demands for preservation and protection of human rights arose as indictments or regime of the past, and mankind, horrified by the unspeakable depredations of recent regimes equipped with the services of destruction at last cried out for a peaceful existence and for inviolable safeguards of its rights from the vagaries of governmental action. *Arnold J Lien*<sup>1</sup>, a great philosopher of the West, has described Human Rights in these words, "Human rights are universal rights or enabling qualities of human beings as human beings or as individuals of the human race, attaching to the human being wherever he appears, without regard to time, place, colour, sex, parentage or environment. They are really the keystone of the dignity of man. In their quintessence they consist basically of the one all inclusive right or enabling quality of complete freedom to develop to their fullest possible extent every potential capacity and talent of the individual for his most effective self management, security and satisfaction."

The creation of a State imposes duties and obligations on the citizen, and from such duties spring the rights of man as observed Mahatma Gandhi in his letter to the Director-General of UNESCO :—<sup>2</sup>

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1. From "Human Rights" by UNESCO, page 24.
  2. From "Human Rights" by UNESCO, page 18.

"I learnt from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for."

'Society,' said *Karl Marx*, 'may be defined as the consubstantiality of man and nature; man must be able to produce freely, to enjoy the fruit of his own work and to live in fellowship with other men and in harmony with himself. In modern society the strongest links between men are the material requirements, private needs and interests, the preservation of their property, the fruits of their labour, and the protection of their individualism. The modern political thought and not only Soviet constitutional theory has recognized the importance of economic human rights as distinct from political rights.' *Jaurès'* statement of human rights in the present day society is worth noting :—

"We must ensure the fullness and the universality of the rights of the individual. No human being at any stage must be left outside. None must be exposed to the risk of being the prey or tool of another. None must be deprived of positive means to work in liberty without servile dependence on any one at all."

The history of human rights is long, and one can trace concern with them back to the Greeks and the Romans. But the history of the declarations of human rights is rather recent and it is particularly associated with the French and the American Revolutions. The sacred doctrine of natural rights of man was incorporated into the constitutions of the eighteenth, nineteenth and twentieth centuries. Such declarations succeeded in improving the relations of men and in advancing the cause of justice. These declarations of human rights were created as bulwork against the injustice of feudalism and were the expressions of the revolutionary movements of the seventeenth and eighteenth centuries in the

West ; they reserved certain inalienable rights to man and forbade governments to touch them. These rights were recognised to be inherent in the very nature of man. In those days these rights were mostly confined to political and civil rights, such as free elections, freedom of speech, freedom of conscience, freedom of association. The advance of technology and industrialisation has brought forth a new set of rights, property rights more commonly known as 'economic and social rights of man' ; it is the result of the changed social and economic conditions of the world. Constitutions of the twentieth Century have made provision for their protection. Both these sets of rights are inter-dependent and not exclusive. The socio-economic rights may be cited as the right to work and enjoy its fruit, the right to education and to social security, the right to recreation and cultural activities, the right to the freedom from want and the freedom from fear. The Charter of the United Nations also lays stress on economic and social rights of man. This more modern conception of the rights of man may be associated with the Russian Revolution. The difference between the traditional conception of purely political rights and the socio-economic conception is illustrated by a comparison between the Declaration of the Rights of Man, a fundamental document of the French Revolution, adopted by the French National Assembly in 1789, and the Declaration of Rights of the Toiling and Exploited People, adopted by the All-Russian Congress of Soviets in January 1918.

The Declaration of 1789 lays down, "Men are free and equal in respect of their rights, the natural and unprescriptable rights of man are liberty, property, security and resistance of oppression ; political liberty consists in the power of doing whatever does not injure another ; the law is an expression of the will of the community and any restriction of liberty must be in accordance with law, and freedom of religious opinions and unrestrained communication of thoughts and opinions should be assured, subject to responsibility for any disturbances of public order."

The fundamental aim of the Russian Declaration of 1918 is 'to suppress all exploitation of man by man, to abolish forever the division of society into classes, ruthlessly to suppress all

exploitation, and to bring about the socialist organisation of society in all countries'.

The Soviet Constitution of 1936 assures to all the Soviet citizens the traditional rights, freedom of conscience, freedom of speech, and freedom of the press and public assembly, in addition to the modern rights, the right to work, the right to material security in old age or sickness, the right to education and equality of rights without any distinction of sex or race.

The Constitution of India has provided in its various Articles a guarantee for the political rights as well as the socio-economic rights, equally necessary for a modern society with a growing working class.

The declaration of rights involves the relation of the individual to the society in which he lives. Such a declaration is *ipso facto* a declaration of obligations also on the part of the citizen towards the State and other citizens. The eighteenth century declaration of rights was the result of a protest by a Revolutionary mob on behalf of the individual against the over-rigid feudal system, and therefore, it lay more stress on the rights of an individual against his obligation to society. But in spite of this, the declaration of 1789 assumes the allegiance of the citizen to the established political and social order; Freedom of speech and freedom of religious belief was made subject to responsibility for any disturbances of public order. Freedoms were not to be tolerated so as to menace the foundation of society. In every written Constitution such an 'escape clause' exists; the Government is always given the power to curtail the liberties or to put reasonable restriction on them in the interest of the State.

In case of socio-economic rights the natural relationship of rights and obligations assumes an acuter form. The obligation in case of political rights is one of passive loyalty to the established political order, but in case of socio-economic rights, the obligation is of an active type because no State can guarantee the enjoyment of such rights unless it has the right to call upon and direct the productive capacities of the individuals enjoying them. Therefore, the Bolshevik writings and Soviet Constitution have

laid down that 'He that doth not work neither shall he eat'. Unless food is produced and cloth manufactured the State cannot discharge its duty to feed and clothe all the citizens.

While creating the fundamental rights, sacred and inviolable, the Indian Constitution too has provided a number of safeguards and armed the Parliament with extraordinary powers to curtail them or to put restrictions whenever the interest of the society and State demands. Maintenance of law and order and the essential supplies for the nation are no less dear than the fundamental rights. Both are correlated and none can exist in isolation; the enjoyment and fulfilment of the one is interdependent on the other. Without internal peace and order and without harnessing the entire energies of the nation, neither social and economic, nor cultural progress is possible. There are limitations of individual liberty for the sake of the individual liberty of others, for the sake of the nation and now for the sake of the world community.

**Purpose.**—The purpose of these sacrosanct and inviolable fundamental rights, incorporated in all the modern democratic Constitutions of the world, can be best illustrated by the observations of Sapru, J.<sup>1</sup> The history of the evolution of the right on the rights of man takes us back into the seventeenth century or even earlier. From the time of Tom Paines' 'Rights of Man, Jeffersons Declaration of Rights, Rousseau, and the French Revolution, schools of thought have existed down to H. G. Wells and the U. N. O. discussions on Human Rights, which assert that man has certain natural or inalienable rights and that it is the function of the State, in order that human liberty might be preserved and human personality developed, to give recognition and free play to those rights."

Justice Millar of the Supreme Court of the United States of America has observed<sup>2</sup> :—

"There are such rights in every free Government beyond the control of the State. A Government which recognised no such rights, which held the lives, the liberty and the property of

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1. *Moti Lal vs. Uttar Pradesh*, A. I. R. 1951 All. 257=I. L. R. (1951) 1 All. 269 (F. B.)

2. *Savings and Loan Association vs. Topaka*, (1875) 22 Law Ed. 455 (461).

its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depositary of power, is after all but a despotism. It is true, it is a despotism of the many, of the majority, if you choose to call it so, but it is, none the less, a despotism."

Madison, the architect of Fundamental Rights Amendment in the Constitution of the United States of America lays down the object in the following words :—

"If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights : they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive: they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights."

Justice Jackson of the Supreme Court of the United States<sup>1</sup> enunciated the purpose of incorporating Fundamental Rights in a Constitution as follows :—

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other Fundamental Rights may not be submitted to vote ; they depend on the outcome of no elections."

The object of incorporating declarations of Fundamental Rights in the Indian Constitution is illustrated by the following observations of Sapru, J. :<sup>2</sup>

"The object of these Fundamental Rights, as far as I can gather from a reading of the Constitution itself, was not merely

1. *West Virginia State Board of Education vs. Barnette*, (1943) 319 U. S. 624 (638)=87 Law Ed. 1628 (1638).

2. *Moti Lal vs. Uttar Pradesh Government*, A. I. R. 1951 All. 257 (296)= I. L. R. (1951) 1 All. 269 (F. B.)



to provide security of citizenship of the people living in this land and thereby helping the process of nation-building, but also and not less important, to provide certain standard of conduct, citizenship, justice and fair play. In the background of the Indian Constitution they were intended to make all citizens and persons, appreciate that the paramount law of the land has swept away privilege and has laid down that there is to be perfect equality between one section of the community and another in the matter of all these rights which are essential for the material and moral perfection of men.

Most of these rights were to be found in the Constitution of the German Republic. The function of these Fundamental Rights as conceived by the Weimar Constitution was to supply standards and prescribe limits for the Legislature, the Executive and administration of justice both in the Federation and in the States. They were intended according to a writer whose language I adopt, to put no bricks in the building but to be the bread of life of the Constitution. The object behind them was that they should sink deeply into the soul of the nation and they had, therefore, to offer more than dry paragraphs."

**Indian Constitution.**—The Constitutions of the Dominions of Canada, Australia and South Africa do not contain the formal declarations of Fundamental Rights because they were framed by the British Parliament which does not recognise any such right and under the principles of English Law the Parliament is Supreme. At the time of the drafting of the Government of India Act, 1935, the Indian Delegation at the three Round Table Conferences had advocated the inclusion of the Fundamental Rights in the Act, but the English Jurists as well as Statesmen vehemently opposed this idea as being not of any great practical value. The Indian Constitution has followed the American pattern in including the Fundamental Rights declaration in it and it has made a departure from the British model. The formal declarations of Fundamental Rights, guaranteed under the Indian Constitution are to be beyond the competence of any legislature to affect except to the extent that the Constitution itself permits, and the higher judiciary is empowered to judge whether any law contravenes the Articles on Fundamental Rights and it is thereby void. These Rights are justiciable.



The provisions regarding Fundamental Rights in the Constitution of India have peculiarities of their own. Unlike those in the Constitution of the United States of America they are very detailed. Another peculiarity of the Indian Constitution is that it contains certain provisions which are the outcome of our social conditions, *e. g.*, Articles relating to religion, race, caste, Backward and Scheduled classes and tribes, untouchability. The third characteristic is the right to move the Supreme Court of India for enforcement and protection of the Fundamental Rights and this right itself has been made a Fundamental Right under Article 32; the Constitution of the United States has no such provision.<sup>1</sup> *Patanjali Sastri*, the Chief Justice of the Supreme Court observed :—

“Our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative Acts under cover of the widely interpreted due process clause in the Fifth and Fourteenth Amendments. If then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader’s spirit, but in discharge of duty plainly laid upon them by the Constitution. This is especially true as regards the Fundamental Rights as to which this court has been assigned the role of sentinel on the *qui vive*. While the court naturally attaches great weight to the legislative judgments, it cannot desert its own duty to determine finally the constitutionality of an impugned statute.”

The various Articles guaranteeing Fundamental Rights also make provision that the State can make laws restricting or depriving citizens of such rights when it is necessary in the interest of the society, and in those cases the laws made by the State can be declared by the Court to be *ultra vires* and *void* only if in its view the Legislature has acted unreasonably, arbitrarily, oppressively or otherwise in a manner not justified by the exigencies of the

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1. *The State of Madras vs. V. G. Row*, A. I. R. 1952 S. C. 196 (199)=1952 S. C. R. 597.

situation. Thus the Constitution has tried to establish the principle of a balance between the individual rights and social control. An example of this principle is to be found in Article 19 where the seven freedoms guaranteed in the first clause are made subject to the power of the Legislature to impose reasonable restrictions in public interest. Thus these rights are not absolute ; they are limited."

*Bose, J. of the Supreme Court observed as follows :—*

"I do not doubt the right of Parliament and of the Executive to place restrictions upon a man's freedom. I fully agree that the Fundamental Rights conferred by the Constitution are not absolute. They are limited. In some cases the limitations are imposed by the Constitution itself. In others Parliament has been given the power to impose further restrictions and in doing so to confer authority on the Executive to carry its purpose into effect. But in every case it is the rights which are fundamental, not the limitations ; and it is the duty of this court and of all courts in the land to guard and defend these rights, jealously. It is our duty and privilege to see that rights which were intended to be Fundamental are kept Fundamental and to see that neither Parliament nor the Executive exceed the bound within which they are confined by the Constitution when given the power to impose a restricted set of fetters on these freedoms, and in the case of the Executive, to see further that it does not travel beyond the powers conferred by Parliament. We are here to preserve intact for the peoples of India the freedoms, which have now been guaranteed to them and which they have learned through the years to cherish, to the very fullest extent of the guarantee, and to ensure that they are not whittled away or brought to nought either by parliamentary legislation or by executive action."

In *Gopalan's case*,<sup>2</sup> *B. K. Mukerjea, J. of the Supreme Court*, observed as follows :—

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*Ram Singh vs. State of Delhi*, A. I. R. 1951 S. C. 270=1951 S. C. 451.  
*Gopalan vs. State of Madras*, A. I. R. 1950 S. C. 27=1950 S. C. R. 88.

"There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession and enjoyment of all rights, as was observed by the Supreme Court of America in *Jacobson v. Massa Chusetts* are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. The question, therefore, arises in each case of adjusting the conflicting interests of the individual and of the society. In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interests of the society ; on the other hand, social control which exists for public good has got to be restrained, lest it should be misused to the detriment of individual rights and liberties. Ordinarily, every man has the liberty to order his life as he pleases, to say what he will, to go where he will, to follow any trade, occupation or calling at his pleasure and to do any other thing which he can lawfully do without let or hinderance by any other person. On the other hand, for the very protection of these liberties the society must arm itself with certain powers. No man's liberty would be worth its name if it can be violated with impunity by any wrong-doer and if his property or possessions could be preyed upon by a thief or a marauder. The society, therefore, has got to exercise certain powers for the protection of these liberties and to arrest, search, imprison and punish those who break the law. If these powers are properly exercised, they themselves are the safeguards of freedom, but they can certainly be abused. The police may arrest any man and throw him into prison without assigning any reasons ; they may search his belonging on the slightest pretext ; he may be subject to a sham trial and even punished for crimes unknown to law. What the Constitution, therefore, attempts to do in declaring the rights of the people is to strike a balance between individual liberty and social control."

The guarantee of Fundamental Rights in the Indian Constitution is adopted to achieve the high ideals set forth in the Preamble to the Constitution for establishing a society founded

on the principles of Justice, Liberty, Equality and Fraternity. These rights are essential for the successful working of a modern democracy of enlightened people and a progressive nation in the fast changing world conditions. These rights are not only the pious enunciations of certain academic principles but are intended to operate as a positive limitation on the powers and privileges of the Legislature as well as the Executive and Article 13 clearly states that all laws which are inconsistent with any Fundamental Right shall be *void* and courts can declare them to be so. These rights are paramount to any State-made laws as observed by *Patanjali Sastri*, J.<sup>1</sup>

“The insertion of a declaration of Fundamental Rights in the forefront of the Constitution, coupled with an express prohibition against legislative interference with these rights (Art. 13) and the provision of a constitutional sanction for the enforcement of such non-interference by means of a judicial review (Art. 32) is, in my opinion, a clear and emphatic indication that these rights are to be paramount to ordinary State-made laws.”

In the aforesaid case of *Gopalan, Kamia, C. J.* observed that the Fundamental Rights constitute “express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation.”

**Article 12. Definition.**—In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

**Article 13. Laws inconsistent with or in derogation of the fundamental rights.**—(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to extent of such inconsistency, be void.

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1. *Gopalan case*, A. I. R. 1950, S. C. 27 (74)=A. I. R. 1950, S. C. R. 88.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention be void.

(3) In this article, unless the context otherwise requires :—

(a) "law" includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law ;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular area.

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## CHAPTER II

### Right to Equality

**Article 14. Equality before law.**—"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The Constitution secures to all the citizens equality before the law and the equal protection of laws within India by Article 14. This Article directly relates to the Preamble to the Constitution in which one of the objects of the Constitution is stated to be to secure to all the citizens the equality of status and of opportunity. This Article is in general terms and Articles 15, 16, 17 and 18 provide details and applications of this general principle in special circumstances. Article 14 provides that the State is not to deny to any person equality before the law and the equal protection of the laws of the land. It provides one of the most important and valuable guarantees in the Constitution.

Section I of the Fourteenth Amendment of the Constitution of the United States of America has also similar provisions that the State shall not "deny to any person within its jurisdiction the equal protection of the laws". ✓

The provision contained in Article 14 establishes the supremacy of law. It lays down that among the equals the law should be equal and it should be equally administered. Every class in society is subject to the ordinary law of the country administered through the ordinary courts of law. Even officials of the government are subject to the same law. It strikes at the very root of discrimination between man and man or between persons of the same class. There is an equality of legal status for all citizens, without any special privilege in favour of any individual, *e.g.* by reason of birth or creed or wealth. Equal protection of laws means that there shall not be arbitrary discrimination made by the laws themselves in their administration.<sup>1</sup> In short, the Article implies "Equal Justice." Similar provision exists in the Constitution of the United States of America. In the case of *Plessey v. Ferguson*<sup>2</sup> the Supreme Court of America interpreted the clause 'Equality before the law', and held that it means political equality and not social equality. Their Lordships observed that the object of the Constitution was to enforce the absolute equality of the two races before the law, but, in the nature of things it could not have been intended to abolish distinction based upon colour, or to enforce social, as distinguished from political, equality, or a mingling of the two races upon terms unsatisfactory to either. Establishment of separate schools for white and coloured children, laws forbidding inter-marriage between the two races, and separate accommodation in the railways for passengers of the two races were held to be valid and justified. It was further held that every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular case.

In the famous case, of *Yick Wo v. Hopkins Sheriff*<sup>3</sup>, Yick Wo who was a Chinese, conducting a laundry in the same building constructed of wood, for 22 years, applied for a licence, but the Board refused licence to the 200 Chinese and granted it

1. *Shrikishan v. State of Rajasthan* (1956) S. C. A. 402; *State of W. Bengal v. Anwar Ali* 1952 S. C. R. 284; *Chiranjit Lal v. Union of India* (1950) S. C. R. 869; *Ameerunnisa v. Mahboob* (1953) S. C. R. 404.

2. 163 U. S. 537.

3. 118 U. S. 35.

to the Americans. The Supreme Court of America held that the Chinese and non-Chinese were carrying on the same business under similar circumstances, and conditions, and it was discriminatory to refuse the licence to the Chinese and to grant it to the non-Chinese, as no reason for it was shown and none existed, except hostility to the race and nationality, and this in the eye of law was not justified and there was denial of the equal protection of the laws.

**Classification.**—In *Satish Chandra vs. The Union of India*<sup>1</sup>, the Supreme Court has laid down that equality before the law means that among equals the law should be equal and should be equally administered and that the like should be treated alike. Thus it does not mean that things which are different shall be treated as if they were similar. The principle of equality is not an absolute check against discrimination and therefore the State has the power of "classification" on the basis of rational distinctions. This view was taken by the Allahabad High Court in the case, of *Murat vs. The State*<sup>2</sup> and also by the Supreme Court in the case of *Ameerunissavs. Mahboob Begum*<sup>3</sup> and *Shakhawat vs. State of Orissa*<sup>4</sup>. Thus the Article forbids discrimination only between persons who are in substantially similar circumstances or conditions. All laws cannot be universal in application or general in character.

In interpreting Article 14, the Indian courts have provided for "classification" being justified and necessary also, otherwise in practical working there will be great drawbacks in a welfare State. In *Kathi Raring vs. State of Saurashtra*<sup>5</sup>, Mukerjee, J. of the Supreme Court stated :

"Legislature for the purpose of dealing with the complex problems that arise out of infinite variety of human relations cannot but proceed upon some sort of selection or classification of persons upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others. Equa-

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1. A. I. R. 1953 S. C. 250(252).
  2. A. I. R. 1953 All. 545.
  3. A. I. R. 1953 S. C. 94=1953 S. C. R. 404.
  4. (1955) 1 S. C. R. 1004.
  5. A. I. R. 1952 S. C. 13=1952 S. C. R. 435.



lity prescribed by the Constitution would not be violated if the statute operates equally on all persons who are included in the group, and the classification is not arbitrary or capricious, but bears a reasonable relation to the objective which the legislation has in view. Legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises. In the case, the *State of Bombay vs. F. N. Balsara*<sup>1</sup> the Supreme Court of India held that the use of foreign liquor on ships and in military and naval messes and canteens does not contravene Article 14 inasmuch as the relaxation of the general law in respect of the persons contemplated by the section is based on reasonable classification.

In *Charanjit Lal vs. Union of India*,<sup>2</sup> Mr. Justice Das of the Supreme Court stated the objects and limits of classification in the following words :—

“The inhibition of the article.....was designed to protect all persons against legislative discrimination amongst equals and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not, however, mean that every law must have universal application, for all persons are not, by nature, attainment or circumstances, in the same position. The varying needs of different classes of persons often require separate treatment and it is, therefore, established by judicial decisions that the equal protection clause.....does not take away from the State the power to classify persons for legislative purposes. This classification may be on different basis. It may be geographical or according to objects or occupations or the like. If law deals equally with all of a certain well-defined class it is not *obnoxious* and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons, and therefore, there is no discrimination amongst equals.”

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1. A. I. R. 1951 S. C. 318.

2. A. I. R. 1951 S. C. 41.



In the aforesaid case *Patanjali Sastri, J.* of the Supreme Court also observed as follows :—

“A Legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must, for that purpose, possess large powers of distinguishing and classifying the persons or things to be brought under the operation of such laws, provided the basis of such classification has just and reasonable relation to the object which the Legislature has in view. While, for instance, a classification in a law regulating labour in mines or factories may be based on age or sex, it may not be based on the colour of one's skin.”

In the case, of *State of West Bengal vs. Anwar Ali Sarkar*,<sup>1</sup> the Supreme Court of India laid down the following principles :—

- (a) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.
- (b) If it is established that the person complaining has been discriminated against as a result of legislation and denied equal privileges with others occupying the same position, it is not incumbent on him before he can claim relief on the basis of fundamental rights to assert and prove that, in making the law, the legislature was actuated by a hostile intention against a particular person or class ; nor would the operation of Article 14 be excluded merely because it is proved that the legislature had no intention to discriminate, though discrimination was the necessary consequence of the Act. The question of intention may arise in ascertaining whether an officer acted *mala fide* or not ; but it cannot arise when discrimination follows or arises on the express terms of the law itself.

- (c) The impugned Act clearly vested the State Government with unrestricted discretion to direct any cases or class of cases to be tried by the special Court, nor a discretion to refer cases only when speedier trial was necessary ; therefore it was void as it contravenes Article 14.
- (d) The necessity of speedier trial is too vague, uncertain and elusive criterion to form a rational basis for discrimination.
- (e) Even if the statute does not confer unregulated discretion on offices, the statute itself is not discriminatory but the charge of violation of the Article may be against the official who administers it. But if the statute itself makes discrimination, without any proper or reasonable basis, it would be void for being in conflict with Article 14.

There are tests for 'classification' laid down by the Supreme Court in *Lakshmandas vs. State of Bombay*,<sup>1</sup> namely (i) "that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a *nexus* between the basis of classification and the object of the Act. To take an example : under section 11 of the Contract Act persons who have not attained majority cannot enter into a contract. The two categories are adults and minors. The basis of classification is the age. That basis obviously has a relation to the capacity to enter into a contract. Therefore, the section satisfies both the requirements of a permissible classification."

Thus it is seen that classification is not repugnant to Article 14 and does not violate the equal protection clause ; the State has the power of distinguishing and classifying persons or things for the purposes of legislation. But the Legislative classification must not be arbitrary and unreasonable, it must bear a direct relationship with the object for which the legislation is

. A. I. R. 1952 S. C. 235=1952 S. C. R. 710.

effected and such relationship must be reasonable. The Statute must operate equally on all the persons of the group formed by the process of classification. Hence Article 14 means that the rights of all persons must rest upon the same rule under similar circumstances. The power of the State to classify is of wide range and flexibility limited by the aforesaid two conditions only.

Article 14 does not prevent the Legislature from introducing a reform gradually, at first applying it to some of the institutions or objects, having common or particular areas only. It also permits the Legislature to select certain objects or areas to which law should apply in the first instance, and then to empower the Executive to add other like objects or areas according to the exigencies of the situation.<sup>1</sup>

The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like, but in all cases there must be a *nexus* between the basis of classification and the object of the Act under consideration.<sup>2</sup> Provisions for speedier trial of certain offences like bribery and corruption were upheld by Supreme Court in *Kedarnath v. State of W. Bengal*<sup>3</sup> and *Asgar Ali v. State of Bombay*.<sup>4</sup>

In *Ram Krishna Dalmia v. Tendolkar*<sup>5</sup>, the Supreme Court held that a classification may be reasonable even though a single individual is treated as a class by himself, if there were some special circumstances or reasons applicable to him alone and not applicable to others.

The classification may be based on the difference in the nature of the persons, trade, calling or occupation, which is to be regulated by the legislation; e.g., special public interest

1. *Biswambher v. State of Orissa* (1954) S. C. R. 842; *Amar Singh v. State of Rajasthan* (1955) 2 P. C. R. 303; *Ramchandra v. State of Orissa* (1956) S. C. R. 346; *Karam Das v. Union of India* A. I. R. 1956 S. C.; *Edward Mills v. State of Ajmer* (1955) 1 S. C. R. 735.

2. Reference on Kerala Education Bill, A. I. R. 1958 S. C. 956; *State of W. Bengal v. Anwar Ali* (1952) S. C. R. 284; *Srikishan v. State of Rajasthan* (1955) 2 S. C. R. 531; *Budhan v. State of Bihar* (1952—54) 2 C. C. 157; *Joshi v. State of M. B.* (1955) 1 S. C. R. 1215. *State of Punjab vs. Ajaib Singh* (1953) S. C. R. 254.

3. 1954 S. C. R. 30.

4. A. I. R. 1957 S. C. 503.

5. A. I. R. 1958 S. C. 538.

in an industry, engaged in producing commodity vital to community, differentiation between citizens and foreigners, classification of dangerous and bad characters in a locality. Sec. 197 Cr. P. Code which requires sanction of Government to present public servants for acts done or purporting to be done in the discharge of his official duties was held to be not discriminatory by the Supreme Court in *Matajog v. Bheri*<sup>1</sup>, because it is based on reasonable classification, *viz.*, that public servants have to be protected from harassment.

Similarly, the validity of Sec. 87B Cr. P. Code was upheld on the ground that ex-rulers are a class by themselves<sup>2</sup>; Secs. 354 I. P. C. and 488 Cr. P. Code on the ground that women require special treatment.<sup>3</sup>

Even under the first Amendment to the Constitution of the United States of America, very wide powers of classification are recognised in the State. In *Barbier vs. Conolly*,<sup>4</sup> the Supreme Court of the United States of America has enunciated the following illuminating principles :—

“But neither the Amendment, broad and comprehensive as it is, nor any other Amendment was designed to interfere with the power of the State, sometimes termed its “Police Powers” to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. From the very necessities of society, Legislation of a special character, having these objects in view, must often be had in certain districts such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits, for supplying water, preventing fires, lighting districts, cleaning streets, opening parks and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose

1. (1956) S. C. R. 22.

2. *Bhimaji v. Ramrao* A. I. R. 1955 Bom. 195.

3. *Girdhar v. State* A. I. R. 1953 M. B. 147; *Themori v. Kohni* A. I. R. 1952 Madras 529.

4. (1885) 113 U. S. 27=28 law Ed. 923.

unequal or unnecessary restrictions upon anyone but to promote, with as little individual inconvenience as possible, the general good. Though in many respects necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions."

According to Professor Willis<sup>1</sup>, equal protection clause in the American Constitution "merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed."

In Article 14 of the Constitution the Constituent Assembly made most valuable provisions guaranteeing a right to equality to the citizens at the same time making suitable safeguards in the interest of public welfare as well as social, political and economic prosperity of the country. It has left to the legislature a very wide field of choice in determining and classifying the subject of its laws to deal with its respective classes in society so long as it is not discriminatory and arbitrary. Such classification must be reasonable and must bear a direct and just relationship to the thing in respect to which it is made. This protects the citizen from the tyrannies of a Government and provides the citizens with a peaceful existence.

**How Classification may be made.**—The Legislature may indicate in the statute itself the persons or things to whom its provisions are intended to apply, or it may lay down the principle or policy for selecting or classifying the persons or objects to whom its provisions are to apply and leave it to the discretion of the government or some administrative authority to select such persons or things, having regard to the principle or policy laid down by the Legislature. It was so held by the Supreme Court in *Radhakrishna Sharma v. Tendolker*.<sup>2</sup>

**Discrimination in favour of the State.**—However the Article has no application to any possible discrimination in favour of the State itself when the State enters into some

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1. Constitutional Law by Willis, (1936) Edition pages 579-580.
  2. (1958) S. C. A. 754.

transaction or business which is open to private individuals. Thus State can create a monopoly of any trade, business or occupation in its favour. It was so held by the Supreme Court in *Saghir Ahmad v. State of U. P.*<sup>1</sup> and *Ram Jawaya v. State of Punjab*<sup>2</sup>. On the same principle it has been held in *State v. Shanker*<sup>3</sup> and *In re Krishnappa*<sup>4</sup> that section 417 (1) of the Criminal Procedure Code which places the State on a special footing as regards appeals against acquittals, is not invalid on the ground of contravention of Article 14.

**Procedural Law.**—The guarantee of equal protection applies against Substantive as well as Procedural Laws. Thus all litigants, who are similarly situated, should be substantially governed by the same procedure for getting relief and for defence, without discrimination.<sup>5</sup> There is a substantial difference in the procedural right of an accused to equality of treatment where the impugned Act deprives the accused *inter alia* of—

- (a) the safeguard of committal proceeding,
- (1) the trial with the help of jurors or assessors,
- (c) the right to *de novo* trial in case of transfer,
- (d) the right to redress in higher Courts, while other accused of the same class have these rights under the general law of the Criminal Procedure.

But a different procedure can be laid down for a particular class of persons, provided discrimination is based upon a reasonable classification having regard to the objective which the legislation has in view and the policy underlying it, e.g. in a law providing for the externment of undesirable persons who are likely to jeopardize the peace of a locality.<sup>6</sup>

A law which authorises the special procedure substantially different from the ordinary procedure to be applied at

1. 1955 S. C. R. 707.

2. 1955 S. C. R. 225.

3. A. I. R. 1955 All. 432.

4. A. I. R. 1957 Andhra Pradesh 163.

5. *Lachman Das v. State of Bombay* 1952 S. C. R. 710; *State of W. Bengal v. Anwar Ali* 1952 S. C. R. 284; *Meenakshi Mills v. Vishwanath* A. I. R. 1955 S. C. 13.

6. *Gurbachan v. State of Bombay*, 1952 S. C. R. 737.

the option of the Executive to persons who are similarly situated in relation to the object of the impugned legislation is discriminatory and void.<sup>1</sup>

**Provision for Special Courts or Tribunals.**—The Supreme Court has dealt with this matter in a number of cases<sup>2</sup> and the position resulting therefrom is as follows:—

1. A law which authorises the trial of any case by special courts or by a procedure which differs substantially from the ordinary procedure to the prejudice of the accused offends against Article 14

(a) Such legislation is discriminatory if it leaves it to the uncontrolled discretion of the Executive to select particular cases under the discriminatory procedure, but not so, if the Legislature itself lays down the policy and the principles on which selection must be made by the administrative authority.<sup>3</sup>

(b) The policy of the legislation may be gathered from the Preamble or even from the general tenor of the Act.<sup>4</sup>

2. There is no discrimination unless the procedure prescribed by the impugned law is substantially different from the normal procedure; minor deviations do not constitute discrimination.<sup>5</sup>

3. But Article 14 is not impugned if certain offences or classes of offences are prescribed by the legislature to be triable by a special court or under special procedure, according to a reasonable basis of classification.<sup>6</sup>

1. *Meenakshi Mills v. Vishwanath A. I. R. 1955 S. C. 13.* *Suraj Mall v. Viswanath* (1955) 1 S. C. R. 448.

2. *Qasim Rizvi v. State of Hyderabad* (1953) S. C. R. 589; *State of W. Bengal v. Anwar Ali* (1952) S. C. R. 284; *Lachman Dass v. State of Bombay A. I. R. 1952 S. C. 235*; *Dhirendra v. Legal Remembrancer* (1952-54) 2 C. C. 111;

3. *Kedarnath v. State of W. Bengal* (1953) S. C. A. 835.

4. *Kathi Raning v. State of Saurashtra* (1952) S. C. R. 435; *Panna Lal v. Union of India A. I. R. 1957 S. C. 397.*

5. *Habeeb v. State of Hyderabad* (1953) 1 S. C. R. 661; *M. K. Gopalan v. State of M. P.* (1952-54) 2 C. C. 1109; *State of W. Benga v. Anwar Ali* (1952) S. C. R. 284.

6. *Kathi Raning v. State of Saurashtra* (1952) S. C. R. 435; *Kedarnath v. State of W. Bengal* (1953) S. C. R. 30.



4. If the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which if it is to be applied, but leaves the selective application of the law to be made by the Executive in accordance with the standard indicated or the underlying policy and object disclosed, is not sufficient for condemning it as arbitrary or violative of Article 14.<sup>2</sup>

**Discretionary Power for the Executive.**—A legislation offends against the guarantee of equal protection if it confers upon the executive or administrative authority an unguided or uncontrolled discretionary power in the matter of application of the law. If the selection is to the absolute and unfettered discretion of an administrative authority, with nothing to guide or control its action, the difference in treatment rests solely in arbitrary selection by that authority. Thus the law, authorising the Executive to select cases for special treatment or to grant exemption from its operation without providing any guide or standard for such differentiation is, on the face of it, discriminatory. Similarly the conferment of a arbitrary power upon the Executive to apply the more stringent provisions of the special law instead of the ordinary law against any person at its pleasure, offends against the equal protection.<sup>2</sup>

However, if the law indicates the policy which inspired it and does not itself make a complete and precise classification of the subject matter, but leaves the selective application of the law to be made by the Executive authority in accordance with the policy indicated, Article 14 is not contravened by the law itself. Thus in *Kathi Raming v. State of Saurashtra*,<sup>3</sup> the Supreme Court held valid a law which provided that "a Special Judge shall try such offences or classes of offences or such cases or classes of cases as the Government may, by general or special order in writing direct," on the ground that the law had laid down a definite legislative policy, viz., "to provide for public safety, maintenance of public order and preservation of

1. *Kedarnath v. State of W. Bengal* (1953) S. C. R. 30.

2. *State of W. Bengal v. Anwar Ali* 1952 S. C. R. 284; *Suraj Mall v. I. T. Comm.* 1954 S. C. A. 743; *State of W. B. v. Anwar Ali* (1952—54) 2 C. C. 50; *Saghir Ahmad v. State of U. P.* (1952—54). 2 C. C. 248.

3. 1952 S. C. R. 435.



peace and tranquillity and the executive had to exercise its power in conformity with this legislative policy ; if it failed, the act of the executive would be liable to be challenged but the Act itself would not be challenged indiscriminately. Similarly, in *Nirmala Textile Mills v. Industrial Punjab Tribunal*.<sup>1</sup> The Supreme Court has held that the Industrial Dispute Act can not be invalidated on the ground of contravening Article 14, for having authorised the Government to refer a dispute either to a Board of Conciliation or to a Court of Enquiry or to a Tribunal, at its discretion, inasmuch as the policy of the Act was expressed to be for the purpose of investigation and settlement of industrial disputes and the Government was to decide what step would be conducive to this end, having regard to the exigencies of each particular case.

Discretionary power given to an authority is not necessarily discriminatory when the legislative policy is clear from the statute, and the discretion is vested in the Government or other high authority as distinguished from a minor official,<sup>2</sup> or when the rules framed an Act lay down the principles or factors to guide the discretion.<sup>3</sup>

The bare possibility that discretionary power may be abused is no ground for invalidating the Law, but if the authority misuses its power by making an arbitrary selection without regard to the policy laid down by the Legislature the administrative Act will be bad and discriminatory. It was so held by the Supreme Court in *Inder Singh v. State of Rajasthan*,<sup>4</sup> and Reference on *Kerala Education Bill*.<sup>5</sup>

### **Denial of Equal Protection in the administration of law-**

There are cases when Equal Protection is denied by the administration of the law, that is by those who administer or execute it, although law itself is not discriminatory. In such cases the charge is against the official's conduct and their acts,

1. A. I. R. 1957 S. C. 329.

2. *Bishwambhar v. State of Orissa* 1954 S. C. R. 842 ; *Amer Singhji v. State of Rajasthan* (1955) 2 S. C. R. 303 ; *Malajog v. Bihari* A. I. R. 1955 S. C. 44 ; *Ramkishan Dalmia v. Tendolkar*, 1957 S. C. A. 754 ; Reference on the Kerala Education Bill A. I. R. 1958 S. C. 956.

3. *Tika Ramji v. State of Orissa* 1956 S. C. R. 393.

4. A. I. R. 1957 S. C. 510

5. A. I. R. 1958 S. C. 956.

if discriminatory and arbitrary, are to be struck down as contravening Art. 14. In these cases the administrative Act is *mala fide* or actuated by a hostile intention, or is done in disregard of the policy laid down by the Legislature. In various cases the Supreme Court has laid down the above principles.<sup>1</sup>

**Discrimination by Judicial Act.**—Article 14 extends to all State action, including acts of the Judiciary, and arbitrary and wilful discrimination by courts would be hit by it. But the judicial decision must of necessity depend on the facts and circumstances of the particular case and what may appear to be an unequal application of the law does not necessarily amount to a denial of equal protection clause unless there is an intentional or purposeful discrimination.<sup>2</sup>

In *Budhan v. State of Bihar*,<sup>3</sup> the Supreme Court has held that though the vesting of unguided discretion in the Executive to direct the trial of a particular person under a special procedure may be discriminatory, it would not be so where the discretion is vested in judicial officers who have to exercise their discretion according to well settled principles and subject to revision by Supreme Courts.

**Article 15. Prohibition of discrimination on grounds of religion, race caste, sex or place of birth.**—“(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to :—

(a) access to shops, public restaurants, hotels and places of public entertainment ; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

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1. *State of W. B. v. Anwar Ali* (1952 54) 2 C. R. 49 ; *Kedarnath v. State of W. B.* (1952-54) 2 C. C. 100 ; *Kathi Ranning v. State of Saurashtra* (1952-54) S. C. 72. ; *Panna Lal v. Union of India* A. I. R. 1957. S. C. 397 ; *Bidi Supply Co. v. Union of India* 1956 S. C. R. 267.

2. *Saghir Ahmed v. State of U. P.* (1955) 1 S. C. R. 707.

3. (1952-54) 2 C. C. 157.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>1</sup>(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

The general principle of the law of equality is enunciated in the preceding Article 14 and the Articles 15, 16, 17 and 18 constitute the specific application of that general principle, suitable for the Indian Society. Article 15 is an attack on the old evils still existing in our society on social as well as political horizon encouraging centrifugal tendency against unity and solidarity of the nation as a whole. With this object in view the framers of the Constitution thought it most suitable to incorporate in Article 15 a mandatory prohibition of discrimination on grounds of religion, race, caste, sex or place of birth against any citizen. The State cannot discriminate among the citizens on these grounds either in legislative or administrative sphere.

The evil of untouchability, communalism and local feelings, rampant in the country drew special attention of the Constitution makers, and they made direct provision in this article.

Thus it is provided that every citizen shall have free access to shops, public restaurants, hotels and places of public entertainment, and he shall not be deprived of this privilege on grounds of religion, race, caste, sex or place of birth ; similar safeguards are provided in respect of the use of wells, tanks, bathing ghats, roads and places of public resorts whether they are wholly or partly maintained out of state funds or they are dedicated for the use of general public.

While the first part of Article 15 prohibits discrimination by the State, the second part of the same article extends this prohibition of discrimination to private and individual institutions also, thus guaranteeing the infringement of the principle of the

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1. Clause (4) of Article 15 has been added by the Constitution of India First (Amendment) Act of 1951.

equality not only against the action of the state, but also against the actions of the individuals against other group of private individuals.

The Preamble to the Constitution provided equality of status and opportunity to all the citizens and this article is an amplification of that principle in guaranteeing the equality of opportunity in matters relating to appointment to any office under the State.

Since the very advent of the British Rule in the country it was recognised that there should be no discrimination against the people of this country on the ground of religion, race, place of birth, colour, or descent and by various proclamations it was given effect to in the administration of this country.

The Government of India Act 1935 also made provision in Section 298 that "No subject of His Majesty domiciled in India shall on grounds of religion, place of birth, descent, colour or any of them be in-eligible for office under the Crown in India or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India." But these provisions were not so wide as Articles 15, 16 and 19 of the Constitution. Nevertheless Section 298 had laid down the foundation and recognised the importance of such an injunction at least against the State.

The Constitution of the United States of America does not contain any exact parallel to Article 15 of our Constitution, but there are certain analogous provisions for specific purposes. There is a provision that citizens of each state shall be entitled to all the privileges and amenities of citizens of the several states. [( Article 4, section 2 (1)].

The 19th amendment of the American Constitution provides that the rights of the citizens of the United States to vote shall not be denied or abridged on account of sex.

In *Gopalan vs. State of Madras*<sup>1</sup> Kania, C. J. described Article 15 as "One of the constitutional provisions limiting legislature's powers and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation."

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1. 1950 S. C. 27=1950 S. C. R. 88.

Article 15 has conferred a fundamental right on the citizen as an individual and it is a guarantee against his being subjected to discrimination in the matter of right, privileges and amenities belonging to him as a citizen. This mandate extends to political as well as other rights including admission into educational institutions. In the case of *Nain Sukh Das*,<sup>1</sup> the Supreme Court held that the system of election to local bodies on basis of communal electorate is bad. In *Anjali vs. State of West Bengal*,<sup>2</sup> Bose, J. held that discrimination regarding admission into educational institutions on ground of sex is prohibited under Article 15.

The Constitution has recognised that wide privileges might result in hardship to the weaker member of the society who need special protection from the State and unless such protection is provided for them they cannot come in line with the more progressive section of the society. Therefore Clauses 3 and 4 of Article 15 have provided special provision for their benefit. These are exceptions to general rule enacted in Clause 1 and are intended to enable the State to make special laws for women and children and for advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and for the Scheduled Tribes. This latter safeguard dealing with backward classes, Scheduled Castes and Scheduled Tribes was added to Article 15 by the Constitution (1st amendment) Act 1951. Thus the State is empowered to make laws for Harijan boys and girls.

In *Joshi v. State of M. B.*<sup>3</sup> The Supreme Court held that Article 15 does not prohibit discrimination on the ground of residence, and it is constitutionally permissible for a state to prescribe that residents of the state would be entitled to a concession in the matter of fees in a State Medical College.

In *Yusuf v. State of Bombay*,<sup>4</sup> the Supreme Court held that Article 14 is a general provision and must be read subject to other Articles on Fundamental Rights ; hence any law making special provision for women or children under Article 15 (3)

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1. 1953 S. C. 384.

2. A. I. R. 1952 Cal. 822.

3. 1955 S. C. R. 1215.

4. (1952-54) 2 C. C. 164.

cannot be challenged on the ground of contravention of Article 14, and Sec 497 I. P. C. was valid although it provided that in an offence of adultery, though the man is punishable for adultery, the woman is not punishable even as an abettor.

In *Kathi Ranning vs. State of Saurashtra*,<sup>1</sup> Patanjali Shastri, C. J. observed as follows :—

“All legislative differentiation is not necessarily discriminatory. In fact the word ‘discrimination’ does not occur in Article 14. The expression ‘discriminate against’ is used in Article 15 (1) and Article 16 (2) and it means, according to the Oxford Dictionary, ‘to make an adverse distinction with regard to’; ‘to distinguish unfavourable from others.’ Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles.”

**Article 16. Equality of opportunity in matters of public employment.**—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes or employment or appointment to an office under the Government of, or any local or other authority within, a state or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this Article shall prevent the State from making any provision for the preservation of appointments or

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1. 1952 S. C. 125=1952 S. C. R. 435.

posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

This Article is again an application of the general principle of equality contained in Article 14. It ensures equality and opportunity for all citizens in matters relating to employment or appointment to public offices under the state. It provides that the State shall not discriminate against a citizen on grounds only of his religion, race, caste, sex, descent, place of birth or residence. Article 15 was directed in general terms and Article 16 deals with the specific purpose of appointment or employment by the State.

An obvious illustration of discrimination against citizen in matters of public appointment was contained in an order of Madras Government now well known as communal G. O. This order was challenged for its validity in the Supreme Court and it was declared by the judges to be repugnant to Clause 2 of this Article. According to that order proportion of posts open to each community was fixed in certain manner, although all of those communities were not backward within the meaning of Clause 4. Its result would be that a candidate belonging to a particular community was not eligible for a certain vacancy although he may be better qualified than others. In *Venkata Raman vs. State of Madras*<sup>1</sup> the Supreme Court held the Government Order repugnant to this clause and therefore *void*.

Clauses 3, 4 and 5 provide exceptions to general rules contained in Clauses 1 and 2. Clause 3 refers to special provisions that can be made by Parliament for reserving provincial appointment to natives of that particular state; Clause 4 gives power to State to make special provision for backward classes

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1. A. I. R. 1951 S. C. 129.



and Clause 5 relates to the affairs of any religious or denominational institution and appointment connected therewith. It is natural that persons not owing allegiance to a religious or denominational institution should not be forced upon that institution to manage its affairs.

In *Banarsidas v. State of U. P.*,<sup>1</sup> the Supreme Court held that Article 16 does not provide that Government are not, like other employers, entitled to pick and choose from amongst a number of candidates offering themselves for employment under the Government, and it is open to the appointing authority to lay down such conditions of service as would be conducive to proper discipline and appointment should be made on competitive basis.

The whole Constitution has provided the safe-guards in favour of the backward classes and special attention has been given for their prosperity and welfare, so that in the near future they may no longer remain backward. The Constitution gives encouragement to backward classes by reserving posts for them.

The benefit of Clause 4 will be available to the backward classes only if in the opinion of the State concerned it is not adequately represented in the services of the State.

As stated under Article 15, provisions similar to Article 16 were incorporated in Section 298 (1) of the Government of India Act, 1935.

Similar provisions were laid down in Section 96 of the Government of India Act, 1915 and also in section 87 of the Act of 1883. Section 275 of the Government of India Act, 1935 contained similar provisions in relation to disqualification by sex.

**Article 17. Abolition of Untouchability.**—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law.”

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1. 1956 S. C. R. 357.



The foremost requirement of establishing the principles of equality in a welfare state in India was to remove the scourge of untouchability which had become inherent in our society for centuries. Article 17 formally declares that Untouchability is abolished in this country, and its practice in any form is strictly forbidden. This Article is again an amplification of the general principles of equality laid down in Article 14. This Article goes a step further and makes the enforcement of any disability arising out of untouchability an offence punishable in accordance with law. The State can make such law; such laws exist in certain states, such as West Bengal Hindu Social Disabilities Removal Act, 1948, the U. P. Removal of Social Disabilities Act, 1947.

Since after the advent of this Constitution such laws can be made only by the Parliament under Article 35 and not by State Legislature. The Parliament has enacted the Untouchability (Offences) Act, 1955, prescribing punishment for the practice of untouchability, for the enforcement of any disability arising therefrom and for matters connected therewith.

**Article 18. Abolition of titles.**—“(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.”

This Article abolishes the system of award of titles by State Governments in this country but it makes an exception in respect of titles which are for military and academic distinction; it forbids an Indian citizen from accepting any title from any foreign State, even citizens of other countries who hold any

office of profit or trust under the State shall not without the consent of the President accept any title from any foreign State. It further prohibits any person who is holding any office of profit or trust under the State from accepting any present, emolument or office of any kind from or under any foreign State without the consent of the President of India.

### CHAPTER III

#### Right to Freedom.

**Article 19. Protection of certain rights regarding freedom of speech etc.**—(1) All citizens shall have the right—

- (a) to freedom of speech and expression ;
- (b) to assemble peaceably and without arm ;
- (c) to form associations or unions ;
- (d) to move freely throughout the territory of India ;
- (f) to acquire, hold and dispose of property ; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular, [nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to—

- (i) the professional or technical qualification necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

The Constitution has guaranteed seven kinds of freedom to the citizen in Article 19 consistent with the dignity of a truly democratic country. It is the guarantee of freedom and equality which is the essential hall-mark of democracy and distinguishes it from totalitarianism. This Article guarantees to the citizens the enjoyment of certain civil liberties as Fundamental Rights while they are free; it does not apply to those who are under detention either by way of punishment or as a preventive precautionary action by the State. The question of the citizen's personal or bodily freedom has been dealt with in Articles 20, 21 and 22. In *Gopalan vs. State of Madras*,<sup>1</sup> Patanjali Shastri J. observed that Article 19 presupposed that "the citizen to whom the possession of these Fundamental Rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests." This Article pro-

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1. 1950 S. C. 27 : 1950 S. C. R. 88.

ects the right given to a citizen against state action only and not against private individuals.<sup>1</sup>

Article 19 is confined to civil rights as distinguished from political rights, such as the right to vote or hold any political office.

Again Article 19 refers to Natural or Common Law rights as distinguished from rights which are created by a statute. If a statute has created a right, it must be exercised subject to the conditions imposed by that statute, and no question of infringement of fundamental rights arises in such cases. In *State of West Bengal v. Subodh Gopal*,<sup>2</sup> the Supreme Court held that Article 19(1) guarantees those great and basic rights which are recognised and guaranteed as the natural rights inherent in the status of a citizen of a free country."

The rights enumerated in Article 19 are not exhaustive ; a free man has far more and wider rights than those stated therein. A free man can eat what he likes, work as much as he likes and idle as much as he likes ; he can drink anything and smoke and do a hundred things which are not included in Article 19. This Article protects only seven rights and others are protected by Article 21. In *Gopalan's* case Das, J. observed —

"In my judgment Article 19 protects some of the important attributes of personal liberty as independent rights and the expression, 'personal liberty' has been used in Article 21 as a compendious term, including within its meaning all the varieties of rights which go to make up the personal liberties of men."

There is a wide difference between the guarantee of liberty in Articles 19 and 21. In so far as a fundamental right is guaranteed by Article 19, the Legislature as well as the Executive are incompetent to interfere with it, but the guarantee of Fundamental Right under Article 21 is a privilege against the executive action and the legislature is free to make any law in respect of it and such law cannot be questioned in a court of law as unconstitutional. Article 21 is just like the guarantee of the liberty or property of a British subject in accordance with the British jurisprudence that no member of the Executive can

1. *Samdasani v. Central Bank of India*, A. I. R. 1952 S. C. 59.  
2. 1954 S. C. A. 65.

interfere with it and that judges shall not shrink from deciding such issues in the face of the executive. The Fundamental Rights guaranteed by Article 19 are beyond the competence of a Legislature to affect, and the action of the legislature contravening Article 19 can be challenged in a court of law as *ultra vires* and *void*.

**Limitations and Restrictions.**—But the Fundamental Rights guaranteed by Article 19 are not Absolute Rights. The social interest is balanced with the individual interest. Each right is saddled with numerous limitations and restrictions. Thus it is only an ordered or controlled Liberty, so as not to interfere with good government and prosperity of the country. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed to the governing authority of the country to be essential to the safety, health, peace, general order and morals of the community. Thus the Constitution has attempted to strike a balance between individual liberty and social control. Article 19 gives a list of individual liberties and prescribes in each clause some reasonable restraining that may be placed upon them by law so that they may not conflict with public welfare or general morality. The permanent interest of the community is to override the interest of the individual. Hence each sub-clause of the Article is to be read with the provision attached to it in Clauses 2 to 6 of the Article. In *Gopalan's case* Patanjali Shastri, J. observed as follows :—

“Liberty”, says John Stuart Mill, ‘consists in doing what one desires. But the liberty of the individual must be thus far limited—he must not make himself a nuisance to other.’ Man as a rational being desires to do many things. But in a Civil Society, his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals. Liberty has, therefore, to be limited in order to be effectively possessed. Accordingly, Article 19, while guaranteeing some of the most valued phases or elements of liberty to every citizen as civil rights, provides for their regulation for the common good by the State imposing certain restrictions on their exercise.”

Similar observations were made by Das, J. of the Supreme Court in *State of Bihar vs. Kameshwar Singh*,<sup>1</sup> in the following words :—

“Whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as a public purpose. With the onward march of civilization our notions as to the scope of the general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community. The emphasis is unmistakably shifting from the individual to the community. This modern trend in social and political philosophy is well reflected and given expression to in our constitution.

“Our Constitution has not ignored the individual but has endeavoured to harmonise the individual interest with the permanent interest of the community. A fresh outlook which places the general interest of the community above the interest of the individual pervades our Constitution.”

The Constitution of the United States of America also does not guarantee absolute freedom ; there too these freedoms are regulated in public interest and various restraints are placed on their enjoyment by the citizen. The Constitution has tried to harmonise the social interest of the community with the social interest of the individual in his personal liberty. The State is to protect that social interest which is of greater importance, and individual or personal liberty has immemorially been limited by the social ideal. Absolute Freedom means anarchy. The first, the fifth and the fourteenth amendments to the Constitution of the United States of America have guaranteed freedom of speech and of the press, freedom of the right of the people peaceably to assemble and to petition the Government against their grievances; it further provides that no person is to be deprived of life, liberty or property without ‘due process of law, and private property shall not be taken for public use without just compensation (like Articles 21 and 31 of our Consti-

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1. 1952 S. C. 252 (290) : 1952 S. C. R. 889 (1020 and 1056).



tution). In this respect the guarantee of Fundamental Rights of personal liberty is very wide and includes all the attributes of personal liberty, immune from legislative interference. But in India only those seven rights guaranteed in Article 19 are immune from Legislature's onslaught and the rest of the liberties guaranteed under Article 21 are subject to the enactments by the Legislatures.

While in the Indian Constitution, the field of legislative interference is limited to those covered by the provisos in clauses 2 to 6 of Article 19, in the United States Constitution, no such limitation is placed and it is left open for the courts to decide by interpreting the words "due process of law." Thus there is more elasticity to suit the changing times. The words "due process of law," have been interpreted by the Supreme Court of America to mean, reasonableness of law and law being required in public interest; it demands that the law shall not be arbitrary, unreasonable or capricious.

The Restrictions that can be imposed on the Fundamental Rights under the Indian Constitution are to be imposed by laws of the Legislature or valid subordinate legislation and not by executive order.<sup>1</sup> All such restrictions may be imposed by law made after the coming into force of the Constitution or existing since before. Restrictions must be reasonable and for particular purpose mentioned in the various sub-clauses permitting such restrictions. In clause (2), the reasonable restrictions shall be in the interests of the security of the State, friendly relations with foreign States, public order, decency, or morality, or it shall be in relation to contempt of law, defamation or incitement to an offence. In clause (3) the reasonable restriction must be in the interests of public order and under clause (4) it must be in the interests of public order or morality. In Clause (5) the reasonable restriction shall be in the interest of the general public or for the protection of the interests of any scheduled tribe. Under clause (6), the reasonable restriction must be in the interests of the general public. Whether a particular Restriction is reasonable or otherwise can be determined by the court of law and if it is found to be unreasonable, it shall be *ultra vires* and *void* as the act will be un-

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1. *Rashid Ahmad vs. Municipal Board* 1950 S. C. R. 566.

mistakably and palpably in excess of legislative power and in violation of the freedoms guaranteed under the Constitution, as observed by the Supreme Court in the case of *Chintaman Rao*.<sup>1</sup> The court has unlimited power to examine the question of unreasonableness.

In the *State of Madras vs. V. G. Row*,<sup>2</sup> Patanjali Shastri, C. J., of the Supreme Court laid down the following decision :—

“Our Constitution contains express provision for judicial review of legislation as to its uniformity with the Constitution unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted due process clause in the Fifth and Fourteenth Amendments. If then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the ‘Fundamental Rights,’ as to which this court has been assigned the role of a sentinel on the quivive. While the court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute.”

In the case of *Chintaman Rao*,<sup>1</sup> Mahajan, J. of the Supreme Court observed as follows :—

“The phrase ‘reasonable restrictions’ connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. The word ‘reasonable’ implies intelligent care and deliberation.....Legislation, which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19 (1) (g) and the social control permitted by Clause (6) of Article 19 it must be held to be wanting in that quality.”

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1. 1951 S. C. 118=1950 S. C. R. 759 *Chintaman Rao vs. State of Madhya Pradesh*.

2. 1952 S. C. 196=1952 S. C. R. 597.



About 'reasonable restrictions' and the standard for judging them, in the *State of Madras vs. V. G. Row*,<sup>1</sup> Patanjali Shastri, C. J., laid down the following principles :—

"...the test of reasonableness, wherever prescribed should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the constitution is meant not only for people of their way of thinking but for all and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

The Supreme Court has further laid down the rule in *Raghubir Singh vs. Court of Wards, Ajmer*,<sup>2</sup> that it is the duty of the Legislature, while imposing restrictions on the Fundamental Rights guaranteed under Article 19, to provide a reasonable procedure, as for instance by providing for notice, opportunity to make representation, and an authority or tribunal to consider the reasonableness of restrictions. The Court is also to determine whether the manner in which imposition of restriction is authorised is reasonable.<sup>3</sup> The restrictions shall be unconstitutional

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1. 1952 S. C. 196 (200)=1952 S. C. R. 597.

2. 1953 S. C. 373.

3. *Gurbachan Singh vs. State of Bombay*, 1952 S. C. 221=1952 S. C. R. 737.  
*The State of Madras vs. V. G. Row*, 1952 S. C. 196=1952, S. C. R. 597,  
*N. B. Khare vs. State of Delhi* 1950 S. C. 211=1950 S. C. R. 591.

if they are repugnant to the principles of natural justice and in such circumstances they cannot be reasonable.<sup>1</sup> A restriction on right, not allowing even to be duly tested in a judicial enquiry can hardly be said to be reasonable.<sup>2</sup>

The determination by the Legislature of what constitutes reasonable restriction is not final or conclusive ; it is subject to the supervision by the court. The ultimate responsibility of determining the reasonableness of the restrictions from the point of view of the interests of the general public rests with the court which cannot shirk this solemn duty cast on it by the Constitution<sup>3</sup> : It is for the court to determine the limitation imposed on a person in enjoyment of the right, should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.<sup>4</sup>

In certain circumstances restrictions might amount to total prohibition of the enjoyment of a right but even then they may be reasonable.<sup>5</sup> e.g., in the case of dangerous or noxious trades trafficking in women, trading in liquors.<sup>6</sup> In other cases<sup>7</sup> of ordinary trade or calling total prohibition violates Article 19 and is not a reasonable restriction.

The Constitution has recognised certain liberties to be sacred and basic for the citizens of a truly democratic welfare state in order to enhance the dignity of the individual and to promote an independence of thought and action, so far as it is not inconsistent with the larger interest of the society as a whole of which the individual himself is an important part. This Article secures freedom of speech and expression, assembly, association, movement, residence, acquisition and disposition of property, and the right to practise any profession or to carry on any occupation, trade or business.

1. *Deodat Rai vs. State*, 1951 All. 718=1. L. R. (1951) 2 All. 745.

2. 1952 S. C. 196=1952 S. C. R. 597.

3. *Hanif Qureshi v. State of Bihar*, 1955 S. C. A. 783.

4. *Dwarka Prasad v. State of U. P.*, 1954 S. C. R. 803.

5. *Moti Lal vs. Uttar Pradesh Government* 1951 All. 257=I. L. R. (1951) 1 All. 269, (F. B.)

6. *Cooverjee vs. Excise Commissioner*. 1954. S. C. R. 873. *Kesava Das vs. Union of India*. 1956 S. C.

7. *Yasin vs. Town Area Committee* 1952 S. C. R. 587.

These liberties are based on modern political philosophy. All citizens have been given the right (a) to freedom of speech and expression ; (b) to assemble peaceably and without arms ; (c) to form associations or unions ; (d) to move freely throughout the territory of India ; (e) to reside and settle in any part of the territory of India ; (f) to acquire, hold and dispose of property ; and to practise any profession or to carry on any occupation, trade or business.

**Position of Corporation.**—It has not yet been finally settled whether a corporation can be a citizen within the meaning of Article 19. *Seopujanrai v. Collector of Customs*.<sup>1</sup>

But Articles 5, 6 and 8 of the Constitution indicate that it is only natural persons who can be citizens, and the Indian Citizenship Act, 1955 also indicates the same thing.

However, it has been held that a Corporation, whose shareholders are citizens<sup>2</sup> and which has a domicile in this country is capable of exercising fundamental rights except those which by their nature cannot be exercised by an artificial person.<sup>3</sup>

**Freedom of speech and expression.**—Sub-clause (a) of Clause 1 to Article 19 guarantees the freedom of speech and expression to every citizen of India. However this general right is hedged in with reasonable restrictions which can be imposed by law made by the State as contemplated in Clause 2 to the Article.

Such law imposing restrictions can be made in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Thus the right guaranteed is a limited one ; even then it is very valuable right which lies "at the foundation of all democratic organizations. For without prepolitical discussions no public education, so essential for the proper functioning of the

1. A. I. R. 1958 S. C. 845.

2. *State of Bombay vs. Chamarhanglia*. A. I. R. 1956 Bom. 1. *Narayan Prasad vs. Indian Iron Co.* A. I. R. 1953 Cal. 696.

3. *Cheranji Lal vs. Union of India*. 1950 S. C. R. 869.

process of the popular Government, is possible", as observed by Patanjali Shastri, J. in *Ramesh Thappar vs. State of Madras*.<sup>1</sup>

The Freedom of Press is not higher than the freedom of an ordinary citizen and is subject to the same limitations as are imposed by Article 19 (2). It would not be legitimate for the State to subject the Press to laws, taking away or abridging the freedom of expression or curtailing circulation, or making it dependent on the Government. The State cannot single out a Press for laying upon it excessive and prohibitive burdens which would restrict its circulation etc., nor can the State impose a specific tax upon the Press deliberately calculated to limit the circulation of information. These things were held by the Supreme Court in *Express Newspapers vs. Union of India*.<sup>2</sup>

*Madison*, the leading spirit in the preparation of the First Amendment in the Federal Constitution of the United States of America, reflected that it is better to have a few of its noxious branches to their luxuriant growth than, by pruning them away to injure those yielding the proper fruits.

It is only through free debates and free exchange of ideas that a Government can be responsible to the will of the people and a peaceful change can be effected, avoiding bloodshed and revolution. The restrictions imposed aforesaid provide only for legislative intervention to deal with the abuses of such freedom. It is of the utmost importance for a society to safeguard itself from incitements for the overthrow of its institutions by force and violence.

In the Constitution of the United States of America the First Amendment contains specific provisions as to freedom of speech and press, so far as the United States as a whole is concerned. It is similarly secured to all citizens by the due process clause in the Fourth amendment so far as a State is concerned. Therefore the State has power to restrict abuse of freedom. In *American Communications vs. Douds*<sup>3</sup> the Supreme Court of America held, "Freedom of speech, press and assembly are dependent upon the Constitutional Government to survive. If it is to survive it

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1. 1950 S. C. 124—1950 S. C. R. 594.

2. A. I. R. 1958. S. C. 578 (617)

3. (1950) 339 U. S. 382—94 Law. Ed. 925.

must have power to protect itself against the unlawful conduct and under some circumstance against incitements to commit the unlawful acts. Freedom of speech does not comprehend the right to speech on any subject at any time.

"The freedoms of the 1st amendment are not absolute, since civil liberties, as guaranteed by the Constitution imply the existence of an organised society maintaining public order without which liberty itself would be lost in the excesses and unrestrained abuses."

Justice Douglas of the Supreme Court of the United States, in *Terminiello vs. Chicago*<sup>1</sup>, held as *ultra vires* a statute, providing for punishment of a person if he delivered a speech which stirred people to anger, created a condition of unrest and dissatisfaction with the existing conditions, and invited public disputes. Douglas, J. laid down the following immortal principles :—

"The right to speak freely and to promote diversity of ideas and programmes is, therefore, one of the chief distinctions that sets us apart from totalitarian regimes.

"...the function of free speech under our system of Government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as though not absolute (*Chaplin Sky vs. New Hampshire*)<sup>2</sup> is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, anger and annoyance. There is no room under our Constitution for a more restrictive view for the alternative would lead to standardisation of ideas either by legislature, courts, or dominant political or community groups."

**Right of Assembly.**—Clause (1) (b) of Article 19 guarantees the right to assemble peaceably and without arms. The right given in general terms in this clause is subject to the restrictions

1. (1949) 337 U. S.—95 Law. Ed. page 1131.

2. (1942) 315 U. S. 568 (571, 572) : 86 Law, Ed. 1031 (1034., 1035).

which can be imposed by reasonable provisions of law in the interest of public order, which are provided by Clause (3). This sub-clause guarantees the right of assembly to citizens so long as it does not come into conflict with the interests of maintaining public order. Similar provisions exist in the Constitution of the United States of America.

**Right to Associations.**—Clause (1) (c) of Article 19 guarantees the right to form associations or unions and the State is authorised in Clause 4 to impose reasonable restrictions in the interests of public order and morality by making law. The reasons for such restrictions are very ably explained by the Supreme Court of America, in *Gumpers vs. Bucks Store and Range Co.*,<sup>1</sup> as follows :—

“Society itself is an organisation and does not object to organisations for social, religious, business and all legal purposes. The law, therefore, recognizes the right of working men to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labour unions have been organised.”

“But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution ; or by standing on such rights and appealing to the preventive powers of a court of Equity. When such appeal is made it is the duty of Government to protect the one against the many as well as the many against the one.”

In the Constitution of the United States, this right is considered to be very valuable and important. The right to form labour unions and trade unions is specifically guaranteed under this Article and it is recognised in all the civilized States. Employers, traders and merchants also have this right.

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1. (1911) 221 U. S. 418=55 Law. Ed. 797.



In the *State of Madras vs. V. G. Row*,<sup>1</sup> the Supreme Court held that restrictions to be imposed must be reasonable and also in the interest of public order or morality, and that section 15 (2) (b) of the Criminal Law Amendment Act, 1908, as amended by the Criminal Law Amendment (Madras) Act, 1950 was not within that scope and therefore their Lordships declared it to be unconstitutional and *void*; the impugned provision had imposed unreasonable restrictions on the freedom of association.

In *Gopalan vs. State of Madras*<sup>2</sup>, the Supreme Court held that it is unreasonable restriction to compel employees to obtain permission of the authorities before forming unions and to prohibit them from becoming members of union not constituted in accordance with the orders of the Government. Even though the Government as Employer might recognise one association only as representative of a particular class of employees, it could not prevent the employees from being members of other lawful associations, nor can it make the previous permission of Government a condition precedent for the exercise of the employees right to become a member of an association.

**Freedom of Movements.**—Clause (1)(d) of Article 19 guarantees to a citizen the right to move freely throughout the territory of India, but Clause 5 gives the State power to impose reasonable restrictions on the right of freedom of movement of a free citizen in the interests of the general public or for the protection of the interests of a scheduled tribe. The object of this clause is the removal of all internal barriers within our country, making the entire land as the home of every citizen of India. It is in conformity with the principle of a single citizenship for the whole country as laid down in Article 5, and it is in line with the assurance for freedom of commerce and intercourse throughout the territory of India, given in Articles 301 and 302.

In *N. B. Khare vs. State of Delhi*,<sup>3</sup> the Supreme Court held that the orders of externment passed against Dr. N. B. Khare under section 4 of the East Punjab Public Safety Act were valid as the infringed provision itself was constitutional and a reasonable restriction within the scope of Clause (5). It is by virtue of

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1. 1952 S. C. 196=1952 S. C. R. 597.

2. 1950 S. C. R. 88.

3. 1950 S. C. 211=1950 S. C. R. 519.

this Clause (5), that permits may be used for entry into India and the use of public way may be regulated by the State.

In the above case the Supreme Court also held that grounds of externment should be provided to the person externed, so that he may make a representation against it. If the law does not contain any such provision it will be void as unreasonable. The ground communicated by the authority should not be vague, insufficient or incomplete. In these cases power can be vested in the Executive to be exercised on its subjective satisfaction<sup>1</sup> and it is valid in view of the extraordinary circumstances.<sup>1</sup>

**Freedom to reside in any part of country.**—Clause (1) (e) guarantees to a citizen the freedom to reside and settle in *any part of the country*, but this is also subject to reasonable restrictions being placed by law in the interest of the general public or for protection of the interests of any scheduled tribe, according to Clause (5). This right is in conformity with the recognition of a single citizenship for the whole country, making the entire territory the home of all the citizens.

**Right to property**—Clause (1) (f) guarantees to a citizen the right to acquire, hold and dispose of property, subject to reasonable restrictions to be placed by law under clause (5) on this freedom in the interest of the general public or for the protection of the interests of any scheduled tribe. The Fifth and the Fourteenth Amendments to the Constitution of the United States of America contain similar provisions. This clause recognises the importance of the right of private property and is the cornerstone for the maintenance of the healthy principles of individualism, as envisaged by Gandhian philosophy. A man is free to acquire any property, even the means of production either by inheritance, gift or the sweat of his labour and to hold it so long as he wishes and to dispose of according to his choice. This right is subject to the requirements of public welfare in a modern democratic society. The right 'to hold' includes the right to manage the property and a citizen cannot be deprived even of its management,<sup>2</sup> except in public interest. In *Raghubir*

1. Bhagubhai v. D. B. (1956) S. C. A. 912=A. I. R. 1956 S. C. 585.  
Khare vs. State of Delhi 1950 S. C. R. 519.

2. 1953 S. C. 373 Raghubir Singh vs. Court of Wards, Ajmer, 1952 All. 746; I. L. R. (1953) I All. 29; Cracknell vs. State of Uttar Pradesh.



*Singh's* case, the Supreme Court has laid down that if a law deprived a person of possession of his property for an indefinite period merely on the subjective determination of an executive officer, such law is not reasonable and it is *void*.

**Right to profession, occupation, trade, business.**—Clause (1) (g) guarantees to all citizens the right to practise any profession or to carry on any occupation, trade or business. The citizen is free to choose his calling in life and is not fettered by any Government action in his choice. To some extent it enunciates the doctrine of *Laissez-faire*. This right includes the right to stop carrying on the business or profession and there is no power in the State which can force it to continue against his will.

The aforesaid right to practise any profession or to carry on any occupation, trade or business is not absolute. It is governed by the Limitations placed on such rights by clause 6 of Article 19. It lays down that reasonable restrictions can be imposed by law on the exercise of such right in the interest of the general public. The State can prescribe by law professional or technical qualifications necessary to practising of any profession, or carrying on any occupation, trade or business.

The State can also make laws relating to the carrying on of any trade, business, industry or service by the State or by a Corporation owned or controlled by the State; such law may even completely or partially exclude citizens from such trade, business, industry or service. Thus the State is authorised to create a monopoly in the subjects provided it is in the interests of the general public.

It is by virtue of the powers to impose such reasonable restriction that the law can provide for permits, licences and certificates for various professions or for carrying on any trade, business or occupation; even licence fees can be imposed for carrying on any occupation, trade or business, but the fee must not be unreasonably heavy. Such provisions exist even in the Constitution of U.S.A. and there too the Supreme Court has held them to be justified under the due process clause of the Constitution, provided it is not arbitrary and is justified as being necessary in the public interest.<sup>1</sup>

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1. (1928) 277 U. S. 350 : 72 Law. Ed. 93, *Re Buik vs. M. C. Bride*.

The licence is a symbol of the State and the licence fee is meant to meet the expenses which the State incurs on its establishment for regulating the trade. As an important attribute of the regulation of trade and commerce the State can regulate even the movement of commodity from one area to another and also export and import of goods.<sup>1</sup>

The State can also prescribe rules for disclosing on labels ingredients of articles, sold for as food.<sup>2</sup>

It can also prescribe the minimum amounts of certain ingredients in edible articles, for example regulating percentage of butter, fat and ice creams.<sup>3</sup>

Under these provisions, limiting the freedom of trade and profession the State is authorised to make laws relating to price control of the commodities, necessitated by the exigencies of modern life in public interest and it is not unreasonable invasion of a citizen's fundamental right. It is necessary for the purpose of establishing industry.<sup>4</sup> Similarly monopoly right to carry on any trade or business cannot be conferred on any individual or association.<sup>5</sup>

Creation of Labour Laws in the form of various Industrial Disputes Acts is also justified on similar principles, but the law should not be unreasonable or amount to total prohibition of particular business as observed by the Supreme Court of India in *Ghintaman Rao vs. State of Madhya Bharat*.<sup>6</sup> It is in the interest of the society that professional and technical qualification should be prescribed for practising any profession or carrying on any occupation, trade or business and such law will not be unconstitutional as a breach of the fundamental right; prescribing a qualification for a doctor or an advocate or even a teacher or an engineer is only to safeguard the interest of the citizen so

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1. 1953 Alld. 545, *Harmoorat vs. State*; (1938) 304 U. S. 144 : 82 Law. Ed. 1234 *Caroline Products Co.*

2. (1919) 249 U. S. 427 : 63 Law. Ed. 689, *Corn Products vs. Eddy*.

3. (1916) 242 U. S. 153 : 61 Law. Ed. 217, *Hutchinson Ice Cream Co., vs. Iowa*.

4. (1940) 310 U. S. 381 : 84 Law. Ed. 1263, *Sunshine & Tehricite Cole Co., vs. Adkins*.

5. *Ibrahim v. R. T. A.* (1952—54) 2 C. C. 217.

6. A. I. R. 1951 S. C. 118 : 1950 S. C. R. 759.

that he may not have to suffer unnecessary risk at the hands of unqualified persons.<sup>1</sup>

The amendment of 1951 provides that the State is free to create a monopoly in favour of itself or to compete with any private traders<sup>2</sup>; but the State cannot legislate to create a monopoly in favour of a particular citizen or a group of citizens.

No licence fee or profession tax can be imposed so as to lead to the total stoppage of the business or activities of the profession.<sup>3</sup> A fee should not be disproportionately high in comparison with the expenditure incurred by the Government in connection with the business in question.<sup>4</sup>

**Article 20.—Protection in respect of conviction for offences.**—“(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.”

Article 19 states the individual liberties and the restraints that may be placed upon those by law in the interest of the society and the State. Articles 20, 21 and 22 are primarily concerned with penal enactments or other laws in the interest of the society which take away personal safety or liberty of persons.

**Retrospective Penal Laws.**—Article 20 lays down some fundamental principles of criminal jurisprudence. Clause (1) enacts that no one should be made to suffer any punishment for an offence in regard to anything except according to the law in force at the time when this was done; no one is guilty of an

1. (1926) 272 U. S. 425; 71 Law. Ed. 331. *Grave vs. Manisota*.

2. *Saghir Ahmad vs. State of U. P.* (1955) 1 S. C. R. 707.

3. *Yasin vs. Town Area Committee* A. I. R. 1952 S. C. 115.

4. *Rashid Ahmad vs. Municipal Board*, 1950 S. C. R. 568.

**Article 21. Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.

**In U. S. A., Japan and England.**—This Article guarantees the life and personal liberty of a person ; one can be deprived of these only in accordance with the procedure established by law. This is a guarantee to freedom of the most essential of all rights, the right to life and personal liberty. Analogous law is to be found in the Fifth and Fourteenth Amendments of the Constitution of the United States of America, under which no person shall be deprived of life, liberty or property without due process of law. This Article has its prototype in Article 31 of the Japanese Constitution of 1946, and the words “procedure established by law” have been taken from it. The famous 39th Chapter of the Magna Charta also provides that :—

“No free man shall be taken or imprisoned or disseized or outlawed or exiled or in any way destroyed ; nor shall we go upon him nor send upon him but by the lawful judgment of his Peers and by the law of the land.”

This guarantee is to be found in the British Laws as early as the beginning of the 13th Century, A. D.

Unlike Article 19, this Article applies to all persons and not only to citizens.<sup>1</sup>

In *Gopalan's* case, Patanjali Shastri, J. observed as follows :—

“The right to live, though most fundamental of all, is also one of the most difficult to define and its protection generally takes the form of a declaration that no person shall be deprived of it save by the process of law or by authority of law.”

According to Kania C. J. in *Gopalan's* case, ‘deprivation conveys the idea of total loss of personal liberty as contrasted with mere restriction on personal liberty. The Supreme Court in that case further held that Articles 19 and 21 were entirely distinct and the question of total deprivation of personal liberty

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1. *Gopalan vs. State of Madras*, A. I. R. 1950 S. C. 27 (71)=1950 S. C. R. 88.

was exclusively within the purview of Article 21 and not that of Article 19, and that Article 19 dealt with certain important individual rights of personal liberty in the case of citizens of India and restrictions that could be validly placed upon such rights.

In *State of Bihar vs. Kameshwar Singh*,<sup>1</sup> Das, J. observed, "Further, the moment even this regulated freedom of the individual becomes incompatible with and threatens the freedom of the community, the State is given power by Article 21 to deprive the individual of his life and personal liberty in accordance with procedure established by law subject, of course to the provisions of Article 22."

In *Gopalan's* case there was a sharp cleavage of opinion among the Judges of the Supreme Court about the meaning of words personal liberty in Article 21. According to Kania, C. J. and Das, J. 'personal liberty' includes not only freedom from bodily restraint but also all rights of the human personality. Patanjali Shastri, J., also concurred with this view in *Ram Singh vs. State of Delhi*.<sup>2</sup> According to Fazl Ali, J., 'personal liberty' means freedom of locomotion. According to Mukerjee, J. 'personal liberty' means liberty of the person or body, i.e., freedom from imprisonment and physical coercion.

According to Dicey, 'personal liberty, means 'a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.'"<sup>3</sup>

**Right subject to law.**—The right conferred by Article 21 is subject to the laws of the Legislature. The Legislature can make any law abrogating or abridging the liberty and the life guaranteed by Article 21 to a person, and even its reasonableness or otherwise cannot be tested by a court not even by the Supreme Court ; such a law is not subject to judicial review, although even the laws imposing restrictions on the lesser rights guaranteed by Article 19 are justiciable and subject to judicial control. This is a great anomaly and the Supreme Court

1. A. I. R. 1952 S. C. 252 (290)=1952 S. C. R. 889.

2. A. I. R. 1951 S. C. 270=1951 S. C. R. 451.

3. Dicey on Constitutional Law.

observed so in *Gopalan's* case. On the very face of it, it appears to be most illogical and open to legislative abuse. Such a right in the Constitution hardly deserves to be called fundamental. However, it is by virtue of this clause that the Legislature has made laws for arrest and detention and they are valid.<sup>1</sup>

**Article 22. Protection against arrest and detention in certain cases.**—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, on the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien ; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed

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1. *Krishnan vs. State of Madras* 1951 S. C. R. 621. *Ram Narayan vs. State of Delhi* 1953 S. C. R. 652 ; *Magbool Hoosen vs. State of Bombay* 1953 S. C. R. 730.



by any law made by Parliament under sub-clause (b) of clause (7) ; or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstance under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provision of sub-clause (a) of clause (4) ;

(b) the maximum period for which any person may in class or classes of cases be detained under any law preventive detention ; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

This Article provides a limitation upon the power of the Legislature under Article 21 to make any law as to deprivation of personal liberty. It prescribes a mandatory procedure to be followed by the Executive.

**Safeguards.**—Article 22 guarantees certain Fundamental Rights to every arrested person and confers the following six Fundamental Rights to every arrested person except in two cases mentioned in clause (3), as essential requirements and safeguards to be followed when it is necessary to deprive any

person for any reason, of his personal liberty by placing him under arrest or keeping him in detention :—

(1) To be informed, as soon as may be, of the grounds for such arrest or detention :—

(2) Not to be denied the right to consult and to be defended by a legal practitioner of his choice.

(3) To be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate.

(4) Not to be detained in custody beyond the said period of twenty-four hours without the authority of a Magistrate.

(5) Not to be detained for a longer period than three months unless—

(a) An Advisory Board consisting of persons who are, or have been or are qualified to be appointed as, Judges of a High Court, has reported before the expiration of the said period of three months that in its opinion, there is sufficient cause for detention, or

(b) Such detention is made in accordance with any law made by Parliament under clauses 7(a) and 7(b) of Article 22.

(6) A person who is detained shall be afforded the earliest opportunity of making a representation against the order of detention.

Clauses (1) and (2) contain the guarantees of Fundamental Rights as stated above. Clause (3) provides that the aforesaid constitutional guarantees under clauses (1) and (2) do not apply to (a) enemy aliens and (b) persons arrested or detained under any law providing for preventive detention. Clauses (4) to (7) lay down fundamental principles as to preventive detention and guarantee certain Fundamental Rights to persons who are arrested or detained under any law for preventive detention.



**Power of Court.**—The Legislature cannot make any law which affects personal liberty and is inconsistent with the provisions of Articles 21 and 22. Such a law would be void. To the extent provided for in this article the Court has power to examine the case of a person arrested or detained in order to see whether the procedure and privileges laid down in this article for his benefit are strictly complied with or not with extreme regularity, and all the steps taken by the authorities concerned must be entirely regular.<sup>1</sup> If the law for detention or arrest does not comply with the aforesaid provisions the court shall declare it to be void.

The Court<sup>2</sup> can pronounce upon the validity of the law of Preventive detention itself on the ground of competence of the Legislature, and may examine its vires by reason of contravention of Article 22. But the court has nothing to do with the reasonableness or unreasonableness of the legislation, or the possibility of its abuse :—

Further the Court can examine whether the authority enforcing the law has committed an abuse of the power vested in it. The Court can examine the ground of detention to see whether they are relevant to the circumstances under which preventive detention could be supported, e.g., security of India or of a State, maintenance of public order, etc., and whether they have a relevant connection with the order. Although the court would not undertake an investigation as to the sufficiency of the materials on which the satisfaction of the detaining authority was grounded, it would examine the *bonafides* of the order and interfere if it was *malafide*. The Court can examine the grounds to see if they are sufficient to enable the detenu to make an effective representation.<sup>3</sup>

But the Court is not competent to enquire into the truth or otherwise of the fact which are mentioned as grounds and

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1. *Naranjan Singh vs. State of Punjab*, A. I. R. 1952 S. C. 106=1952 S. C. R. 395;

*Makhan Singh vs. State of Punjab*, A. I. R. 1952 S. C. 27=1952 S. C. R. 368.

2. *Gopalan v. State of Madras* 1950 S. C. R. 88.

3. *Tarapado v. State of West Bengal* 1951 S. C. R. 212.

cannot go into the question whether on merits the order was justified.<sup>1</sup>

The Supreme Court has held that the detention of a person must be valid not only at its commencement but also throughout and no provision of the law or constitution should be violated even subsequently and if any violation occurs during the course of detention, the detenu shall be entitled to be released.<sup>2</sup>

Clauses (3) to (7) of this Article are designed to prevent any abuse of liberty by the anti-social, alien, or subversive elements which might imperil the national security and welfare of the Republic. Hence, although the Constitution invests personal liberty with the sanctity of a Fundamental Right, it had to make safeguards for the preservation of democracy in this country. It is by virtue of these provisions in Articles 21 and 22 that the Preventive Detention Act is justified. Unlike the American or Japanese Constitutions, the Indian Constitution contains provisions permitting preventive detention even in normal times and without any declaration of emergency. In *Gopalan's case*, Patanjali Shastri, J. observed as follows :—

“The outstanding fact to be borne in mind in this connection is that preventive detention has been given constitutional status. This sinister looking feature, so strangely out of place in a democratic constitution, which invests personal liberty with the sacrosancity of a Fundamental Right, and so incompatible with the promises of its Preamble, is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might imperil the national welfare of the infant Republic”.

#### CHAPTER IV

#### Right against Exploitation

**Article 23. Prohibition of traffic in human beings and forced labour.**—(1) Traffic in human beings and *begar* and

1. *State of Bombay v. Atmaram* 1951 S. C. R. 167.

2. *State of Bombay vs. Atma Ram*, A. I. R. 1951 S. C. 157=1951 S. C. R. 167.

other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

**Article 24. Prohibition of employment of children in factories, etc.**—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

In our country the dying feudal system and poverty had left their vestiges which had become so ingrained in the life of the people that it was necessary to provide a Fundamental Right in order to uproot them completely. Therefore, the Constitution makers have made special provisions for prohibition with regard to traffic in human beings, forced labour, and employment of children. Under Article 23 traffic in human beings, *begar* and other similar forms of forced labour are prohibited, and they are made an offence, punishable in accordance with law to be made by the State, but the State can impose compulsory service for public purposes without making any discrimination on grounds of religion, race, caste or class. This preservation of power to the State is essential for emergency times, such as war, floods and other natural devastations.

**In Japan and U. S. A.**—Similar provisions exist in the Japanese Constitution and also in the 13th Amendment of the Constitution of the United States of America under Article 24, children below the age of fourteen years are forbidden from working in any factory or mine, or any other hazardous employment. It was most essential that the children of a truly democratic State should draw the attention of the Constitution makers, because it is on their education, health and well being, that the future of this country depends. In a Republic the State finds its support from the millions of its people and not from an aristocracy or a section of the middle class only.

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## CHAPTER V

## Right to Freedom of Religion.

**Article 25. Freedom of conscience and free profession, practice and propagation of religion.** (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

*Explanation I.*—The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.

*Explanation II.*—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

**Ideal of Secular State.**—This Article flows naturally from the ideal of the secular State envisaged by the framers of the constitution.

The aforesaid Article provides some of the most important guarantees in our Constitution. Its importance can be judged in the context of the communal backgrounds of this country. For centuries the people of India have been thinking and acting in terms of religious communities and very often these considerations led to vast destructive riots, murders and arsons, devastating villages and towns. Now in a free Democratic Republic it was very essential that such considerations should disappear and the idea of an Indian citizenship based on the equal constitutional rights for all should emerge and bind

together firmly the people of various religious views, divergent cultures, regional languages, and multifarious economic interest throughout the length and breadth of this country.

With this end in view our Constitution has guaranteed freedom of conscience and free profession, practice and propagation of religion. Every citizen is free to worship the God of his choice, according to the dictates of his own conscience. The State has no concern with it. The Indian State as a political association is concerned with the social relations between man and man and not with the relation between man and God which is a matter for the individual conscience.

**No State Religion unlike U.S.A., Eire and Burma.**—This State has no religion of its own and it patronises none ; it does not discriminate between citizen and citizen on grounds of religion, nor is the State to grant any patronage on this ground. In this respect the Indian Constitution is much more secular than the Constitutions of Eire, Burma and even the United States of America, all of which recognise some special church or 'faith'. Freedom of conscience is coupled with the freedom of profession, practice and propagation of his religion by every citizen in public ; he is free to preach as well as to worship in private and in public unhampered by the State or others.

The freedom of religion conferred by this Article is not confined to citizens of India but extends to all persons, including aliens, and individuals exercising their rights individually or through institutions.<sup>1</sup> The Supreme Court has held that sacrifice of cow is not an obligatory overt act enjoined by the Muslim religion.<sup>2</sup>

**Restrictions.**—The aforesaid freedom is guaranteed subject to public order, morality and health. These have got to be specially safeguarded in the interest of society as well as the State. The moral and material well being of the society must supersede the individual's considerations and hence there is provision for these controls which may be very wide according to the exigencies of the situation. Thus no particular sect can justify a crime

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1. *Ratilal vs. State of Bombay*. 1954 S. C. R. 1055.  
*H. R. E. vs. Lakshmindra* 1954 S. C. R. 1005.
  2. *Hanif Qureshi vs. State of Bihar*. 1958 S. C. R. 783.

or other unsocial and immoral activities in the name of religion. Freedom of religion would not allow human sacrifice to be tolerated, even though it may be sanctioned by some religious creeds, ( e. g. some of the *Tantras* ), nor would it allow scourge of untouchability or the system of *Dev Dasis* to remain in Indian society, (Art. 17 and Art. 23 (1) ). A citizen shall not be allowed to avoid service for public purposes on ground of religion [(Art. 23(2))]. Similarly, freedom of religion would not extend to political doctrines associated with particular creeds, which is not the essence of religion, e. g., carrying on anti war propaganda in the name of religion.

**Exceptions.**—The freedoms guaranteed by clause (1) of Article 25 are subject to the exceptions provided by sub-clauses (a) and (b) of clause (2). According to sub-clause (a) the freedom of practice would extend only to those rites and observances which are of the essence of religion and would not cover secular activities which go under the guise of religion and are no part of true religion, e.g. personal law relating to marriage and adoption founded on the Hindu and Mohammedan scriptures. These can be regulated and restricted by the State. Similarly the State cannot allow subversive activities to be carried on in the name of religion, and it can check anti-war activities of religious bodies if it is required for the safety of the State.

Under sub-clause (b) social reform will have precedence over religious practice and if the two come into conflict, the latter must yield to the former. Thus the Constitution has not accepted the present concept of religion in Indian society which is so vast as to cover every aspect of life from birth to death. Thus the system of *Dev dasis* cannot stand in the way of social reforms. The State can make laws providing for the throwing open of Hindu religious institutions of a particular character to all classes and sections of Hindus. This was necessary in order to uproot the orthodoxy of caste-system and the scourge of untouchability in Hindu society. Thus it aims at removal of disunion and inequality among various sections of the Hindu society. Harijans can enter all public temples, *dharmshalas* and bathing ghats without feeling that they are different from the higher castes.



**Article 26. Freedom to manage religious affairs.**—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion ;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

**Institutions.**—As in the previous Article, this Article also deals with allied freedoms relating to religion. It guarantees to every religious denomination or any section of it the right (a) to establish and maintain institutions for religious and charitable purposes, (a) to manage its own affairs in matters of religion, (a) to own and acquire property of any kind, and (d) to administer its property in accordance with law.

This Article is a necessary corollary to the freedom guaranteed in Article 25 and without it the freedom given by Article 25 could not serve any living purpose.

The aforesaid freedoms guaranteed in this Article are also subject to public order, morality and health as in the previous Article, and these considerations are to supersede the freedoms given by this Article.

**Article 27. Freedom as to payment of taxes for promotion of any particular religion.**—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

**No taxation for religion.**—According to this Article the Constitution prohibits taxation for the promotion of any particular religion, but it does not bar the State from making any provision by which religious institutions are benefited along with secular ones without any discrimination, or by which all religious institutions are benefited alike. This Article prohibits



only discrimination for supporting any particular religion ; similar provisions exist in the Constitutions of the United States of America, Switzerland and Japan.<sup>1</sup>

**Article 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.**—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State Funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

The State is not to provide any religious instruction in educational institutions maintained by it out of State funds, and no student can be compelled to attend religious institutions or worship in educational institution which is recognised by the State or receives aid out of State funds. However, in educational institutions administered by the State but established under any endowment or trust requiring religious instructions to be imparted, such instructions shall be given and in their case an exception has been provided. Thus the Article exhibits a compromise between two opposite considerations. On the one hand, the Indian society has been much exploited in the name of religion, and the dogmas of different religions and different schools of religious thoughts had proved highly detrimental to our society. Owing to multiplicity of religions it was not possible for the State to cater for all, nor would it be consistent with the secular character of the State. On the other hand, in this country religion forms the core of our morality and culture, therefore religious institution in some form or other was necessary. Hence the Constitution has struck

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1. *H. R. E. vs. Lakshmindra* 1954 S. C. R. 1005.

a via media, and leaves any community or religious denomination free to conduct religious instructions to those who are willing to acquire freely and voluntarily.

## CHAPTER VI

### Cultural and Educational Rights

**Article 29. Protection of interests of minorities.**—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**Article 30. Right of minorities to establish and administer educational institutions.**—(1) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

**Minorities.**—India is a vast country inhabited by people speaking different languages, using different scripts and having divergent ways of living. These two Articles provide safeguards for the interests of the minority communities within the Indian territory; their cultures, languages and scripts are to be conserved and saved from discrimination.

**Language.**—The Constitution provides by Article 343 that the official language of the Union shall be Hindi in Devangari script, and Article 345 provides that the Legislature of a State may, by law, adopt any one or more of the languages in use in the State, or Hindi as the language for official purposes. Notwithstanding the aforesaid provisions for an all India language and script, the Constitution by Article 29 has recognised the

importance of regional languages and scripts and therefore, guarantees for their preservation. The language, script or culture of every section of the citizens of India is protected by Constitutional guarantee. At the same time all educational institutions maintained by the State or receiving aid out of State funds are open to every citizen and he cannot be denied admission on grounds of religion, race, caste, or language. This is a positive check against discrimination. Article 15 (cl. 4) enables the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

Article 30 protects the rights of minorities by guaranteeing to them the right to have their own educational institutions. The State is not to discriminate against any educational institution on the ground of its being managed by a religious or linguistic minority. This Article is complementary to Articles 26 and 29(I). Minority institutions are entitled to state aid in the same way as other institutions, but if they receive State aid they cannot refuse admission to any person on ground of religion caste etc.<sup>1</sup>

## CHAPTER VII

### Right to Property

**Article 31. Compulsory acquisition of property.**—(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

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1. *In re Kerala Education Bill*, A. I. R. 1958 S. C. 956.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of property.]

(3) No such law as is referred to in Clause (2) made by the Legislature of a State shall effect unless such law, having been reserved for the consideration of the President has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of Clause (2).

(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law other than a law to which the provisions of Clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification ; and thereupon, if the President by public notification so certifies, it shall not be called in

question in any court on the ground that it contravenes the provisions of Clause (2) of this Article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

**Private Property. Its acquisition and limitations.—**

The Constitution has recognised the sanctity of private property and guarantees to a citizen by Article 19 (1) (f) the right to acquire, hold and dispose of property. But the social and political needs of the State often make it necessary for a State to acquire or requisition private property for public purposes. This power of the State is called the power of Eminent Domain. Article 31 prescribes limitations on the power of the State and modes in which the citizen can be deprived of his property. Therefore, the Constitution has provided three safeguards in Clauses (1) and (2) of this Article, that the taking of private property by the State must be for public purpose, it must be done in accordance with law and compensation must be given to the holder of the property. Thus arbitrary deprivation of property by executive action alone is excluded; unless the executive acts under the authority of any law, it cannot deprive a citizen of his property. Another safeguard against Legislature's indiscriminate authority to make law on this subject is to be found in Clause (3) of this Article which requires that the law relating to this subject must have the assent of the President after being reserved for his consideration. Thus hasty action on the part of any State Legislature is completely checked.

**Exceptions.—**Clauses (3) to (6) of Article 31 and Articles 31A and 31B provide certain exceptions to general provisions of Clause (2).

**Distinction between Article 19 (1) (f) and Article 31.—**

There is a distinction in Article 19 (1) (f) and, Article 31. Where there is total deprivation of property or the acquisition or requisitioning of property the Article applicable is Article 31, but where there is only a partial deprivation of the right to hold, enjoy and dispose of property the proviso to Article 19 (1) (f) applies. In the latter case reasonableness of the State action in placing restriction is open for consideration by the Court, but in the case of total deprivation under Article 31, the Court cannot look into the reasonableness of the State action. Article 19

corresponds to the police power of the State and Clause (2) of Article 31 is akin to the power of Eminent Domain under the American Law. According to Professor Wills in Constitutional Law at page 225 :—

“Eminent Domain differs from the police power in that the police power is not a taking of any rights, whether of property or person, from people but the limitation on the exercise of such rights by people although the police power may also result in making people lose their property.”

Thus Article 19 is concerned with placing restrictions or restraints on the right of a person in respect of his property, while Article 31 is concerned with his being totally deprived of it by acquisition or requisition for public purpose.<sup>1</sup>

Clause (1) of Article 31 deals with deprivation of a person of his property simpliciter, but Clause (2) relates to certain forms of such deprivation, i.e. where it is acquisition or taking possession by the State. This distinction is pointed out by Das, J. in *Chiranjit Lal vs. Union of India*.

“One can conceive of circumstances where the State may have to deprive a person of his property without acquiring or taking possession of the same. For example, in any emergency, in order to prevent a fire spreading, the authorities may have to demolish an intervening building. This deprivation of property is supported in the United States of America as an exercise of ‘Police Power’. This deprivation of property is different from acquisition or taking possession of property which goes by the name of Eminent Domain in the American Law...the language of Clause (1) of Article 31 is wider than that of Clause (2) for deprivation of property may well be brought about otherwise than by acquiring or taking possession of it. I think Clause (1) enunciates the general principle that no person shall be deprived of his property except by authority of law which put in a positive form implies that the person may be deprived of his property, provided he is so deprived by authority of law. No question of compensation arises under Clause (1). The effect of

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1. *Chiranjit Lal vs. Union of India* A, I. R. 1951 S. C. 41=1950 S. C. R. 869.

*D. H. Nobhirajiah vs. State of Mysore*, A. I. R. 1952 S. C. 339 (342)=1952 S. C. R. 744.



Clause (2) is that only certain kinds of deprivation of property namely those brought about by acquisition or taking possession of it, will not be permissible under any law, unless such law provides for compensation. If the deprivation of property is brought about by means other than acquisition or taking possession of it, no compensation is required, provided that such deprivation is by authority of law."

The aforesaid view seems to be very reasonable but in *State of West Bengal vs. Subodh Gopal*<sup>1</sup>, *Dwarka Das Sholapur Spinning Co.*,<sup>2</sup> and *Saghir Ahmad vs. State of U. P.*<sup>3</sup> recently the Supreme Court has held against this view and laid down that Clause (1) is governed by Clause (2) and compensation and public purpose are necessary ingredients even under Clause (1) in case of deprivation of a person of his property simpliciter. This anomaly was removed by providing a new Clause (2- A) by the Fourth Amendment to the Constitution. It provides that compulsory acquisition or requisitioning of property in Article 31 (2) is limited only to those cases where the law provides for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State; other forms of deprivation of any person of his property are no longer covered by Article 31 (2). Thus Clauses (1) and (2) are now distinct. While all cases of 'deprivation' are included within the purview of Clause (1), the cases of acquisition and requisition, involving transference of ownership or right to possession to the State; are specifically dealt with in Clause (2) and no other mode of deprivation can, accordingly, be held to attract the operation of Clause (2). The only cases where compensation is payable are those where any property is physically or constructively transferred to the State or to a Corporation owned or controlled by the State. No liability for compensation can arise in cases of regulation or restriction of the rights of ownership, or in cases of harm or injury caused to the proprietary rights of a person owing to the legitimate action of the State, or in cases, of total destruction of property without involving transfer of dominion to the State.

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1. (1954) S. C. A. 65.

2. (1954) S. C. A. 132.

3. 1954 S. C. A. 1218.



A person is held to be deprived of property if a substantial portion of his rights in the property are taken away, so that what is left with him is of no value or of an illusory name.<sup>1</sup>

The power of Eminent Domain is not conferred on the State directly by any provision in Article 31; this Article does not expressly confer on the State the power of compulsory acquisition of property or the power to compulsorily take possession of property. The clauses only impose certain limitations on the exercise of the power. However, the existence of the power of Eminent Domain is necessarily implied in the various provisions of this Article.

In *State of Bihar vs. Kameshwar Singh*, Mukherji,<sup>2</sup> J. observed as follows :—

“It cannot be disputed that in every Government there is inherent authority to appropriate the property of the citizens for the necessities of the State and constitutional provisions do not confer this power though they generally surround it with safeguards.”

In the American Constitution also this power is not directly conferred by the provisions of the Constitution. According to Professor Willis ‘it is implied from the limitations imposed by the 5th Amendment’; he further says that ‘even if there was no limitation, it would be an implied power of the Federal Government.’<sup>3</sup>

In *Chiranjit Lal vs. Union of India*,<sup>4</sup> the Supreme Court took a similar view. In the *State of Bihar vs. Kameshwar Singh*, Mahajan, J. traced the history of State’s power of Eminent Domain as follows :—

“This power is a sovereign power of the State. Power to take property for public use has been exercised since olden times. Kent speaks of it as an inherent sovereign power. As an incident of this power of the State is the

1. *Chiranjit Lal vs. Union of India*, A. I. R. 1951, S. C. 41=1950 S. C. R. 186.

2. A. I. R. 1952 S. C. 212 (279)=1952 S. C. R. 889.

3. Willis on Constitutional Law of the United States. 1936 Ed. p. 225.

4. A. I. R. 1951 S. C. 41=1950 S. C. R. 869.

requirement that property shall not be taken for public use without just compensation..... On the Continent the power of compulsory acquisition is described by the term 'Eminent Domain'. This term seems to have been originated in 1625 by Hugo Grotius who wrote of this power in his work, "*De Jure Belli Et Paus*", as follows :— The property of subjects is under the Eminent Domain of the State so that the State or he who acts for it may use and even alienate and destroy such property not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded Civil Society must be supposed to have intended that private ends should give way. But it is to be added that when this is done, the State is bound to make good the loss to those who lose their property."

The Fourth Constitution Amendment Act is not retrospective.<sup>1</sup>

Now the adequacy of compensation cannot be challenged in Court.<sup>2</sup>

**States, Powers—Clauses (3) and (4).**—The Parliament as well as the State Legislatures have power to make laws for compulsory acquisition and requisition of property under Clauses (1) and (2). But the State law must receive the assent of the President after being reserved for it. If a Bill was pending in a State Legislature at the commencement of the Constitution and it has received the assent of the President, after being reserved for this purpose, then the law so made cannot be questioned in any court on the ground that it contravenes the provisions of Clause (2).

**Saving Clause (5).**—Clause (5) saves the following laws from the effect of Clause (2) even though they contravene its provisions :—

1. *Bombay Dyeing Co. v. State of Bombay*. (1958) 60 Bom. L. R. 731, (739) S. C. *Julius v. Saniaro*. A. I. R. 1958 Pat. 519.

2. *State of W. B. v. Bela Benerji*, 1954 S. C. A. 41. *Amar Singh v. State of Rajasthan*, (1955) 2 S. C. R. 303 (363).

- (a) Existing laws other than those which come under clause (6) laws enacted more than 18 months before the commencement of the Constitution.
- (b) Any law made by the State after the commencement of the Constitution for imposing or levying any tax or penalty, or for the promotion of public health or the prevention of danger to life or property or in pursuance of any agreement between the Indian Government and any other country's Government, or with respect to evacuee property.

**Saving Clause (6).**—This Clause gives the President power for certification of any law of the State enacted not more than eighteen months before the commencement of the Constitution. On such certification that Law will not be called in question in any court on the ground that it contravenes Clause (2) of Article 31 or section 299 (2) of the Government of India Act, 1935. But for certification the law must be submitted to the President within three months of the commencement of the Constitution.

The aforesaid Clauses (4), (5) and (6) of Article 31, and Articles 31-A and 31-B provide exceptions to the provisions of Clause (2) of Article 31. Those classes of laws which are covered by these provisions will always be valid if the conditions laid down in those provisions are fulfilled and they cannot be attacked on the ground that they contravene Article 31 (2).

**Article 31-A. Saving of laws providing for acquisition of estate etc.**—“(1) Notwithstanding anything contained in Article 13, no law providing for :—

- (a) the acquisition by the State of any estate or of any rights therein of the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral oil or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent ; and

(2) in this Article

- (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jagir*, *inam*, or *muafi*, or other similar grant; [and in the States of Madras and Kerala any *janm* right];
- (b) the expression 'rights' in relation to an estate shall include any right vesting in a proprietor, sub-proprietor, under-proprietor, tenure holder, *rayat*, under-*rayat* or other inter-mediary and any rights or privileges in respect of land revenue."<sup>1</sup>

Articles 31 A and 31 B were included in the Constitution by the Constitution (First Amendment) Act of 1951 in order to validate certain Zamindari Abolition Laws which might otherwise

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1. *Leg. changes*.—Article 31-A was added by the Constitution of India (First Amendment) Act of 1951. Clause (1) was substituted by the Constitution (Fourth Amendment) Act of 1955. In sub-clauses (a) and (b) of Clause (2) the words in brackets have been added by the Constitution (Fourth Amendment) Act of 1955.

have been invalid as contravening the Articles 14, 19 and 31 of the Constitution, contained in Part III on Fundamental rights. Article 31-A was further amended by the Constitution (Fourth Amendment) Act of 1955. Article 31-A grants immunity to Acts relating to estates and authorises the making of law for compulsory acquisition of rights in respect of them irrespective of the various checks provided by Part III of the Constitution ; it further provides for law under which the States can take over the management of any property for a limited period either in the public interest or for securing proper management, and a law can provide for the amalgamation of two or more corporations either in the public interest or for securing proper management ; the Legislature can make law providing the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof ; the Legislature can also make law providing for the extinguishment or modification of any rights accruing by virtue of agreement, lease or licence, for the purpose of searching for or winning, any mineral oil or the premature termination or cancellation of any such agreement, lease or licence.

In case of law made by a State, provisions of Article 31-A will apply only if the assent of the President has been received after its being reserved for his consideration. This Article applied to estates only.

**Article 31-B. Validation of certain Acts and Regulations.**—"Without prejudice to the generality of the provisions contained in Article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."<sup>1</sup>

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1. *Leg. changes.*—Article 31-B has been added by the Constitution (First Amendment) Act, of 1951.

This Article was also included in the Constitution by the Constitution (First Amendment) Act of 1951. This Article validates the various laws enumerated in Schedule IX to the Constitution, and provides that they shall not be deemed to be void or ever to have become void on the ground that they contravene any provision granting Fundamental Right in Part III of the Constitution. This Article is not limited in its scope to estates but applies also to properties which are not estates : it is not merely illustrative of Article 31-A. The Ninth Schedule contains thirteen Acts in respect of Abolition of Zamindaries and Land Reforms.

Articles 31-A and 31-B are exceptions to the general rules of Fundamental Rights provided in the Constitution and they remove the obstacles in the way of establishing a truly socialist society in our country ; these Articles were also necessary in the interest of the people, the well-being of individuals and for the development of this country.

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## CHAPTER VIII

### Right to Constitutional Remedies.—(Writs)

**Article 32. Remedies for enforcement of rights conferred by this Part.**—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo-warranto* and *certiorari*, which ever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by Clauses (1) and (2) Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2).



(4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution.

**Article 226. Power of High Courts to issue certain writs.**—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo-warranto* and *certiorari* or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by Clause (1) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32.

These Articles make the Supreme Court and the High Courts the guarantors and protectors of the Fundamental Rights conferred by the Constitution. The Supreme Court and the High Courts have concurrent jurisdiction in this matter. The responsibility and power conferred on the Supreme Court is a special one whereas the responsibility conferred on the High Courts is a part of their general jurisdiction. Articles 32 and 226 guarantee the right to move the Supreme Court of India and the High Courts respectively to issue directions or orders or writs. The power is very wide. Writs in the nature of *habeas corpus*, *mandamus*, Prohibition, *quo-warranto* and *certiorari* are to be granted by these courts. The powers of the Supreme Court are confined to those cases where there is a breach of the Fundamental Right, but the Powers of the High Court under Article 226 are much wider as they are empowered to grant writs and orders for breach of a Fundamental Right as well as for any other purpose. Thus, wherever there is an infringement of a legal right, High Court can intervene.

Under Clause (3) of Article 32, the Parliament can make law empowering any other court (including a High Court) to exercise within its territory all or any of the powers exercisable by the Supreme Court under Clause (2).

Article 32 makes the Fundamental Rights really justiciable and an easy, quick, cheap and efficient procedure is prescribed



which can be within the means of the ordinary citizen. It is the greatest safeguard of the rights of the man in our Constitution. Without this safeguard mere declaration of Fundamental Rights would have been meaningless. In England there is no written Constitution, but the individual rights are safeguarded by means of the 'prerogative writs' which have been called 'the bulwark of English liberty' (Dicey). Even in the Constitution of the United States of America there is no specific provision relating to writs, but there is specific prohibition against suspension of '*habeas corpus* Writs' (Article 1, Section 9(2)); but the Constitution assumed that these common law writs would be available in the United States. In the United States writs are issued both by the District Courts and the State Supreme Courts; but the Supreme Court of the United States uses the powers only in its appellate character.

The Constitution of Burma also provides for similar writs (Article 25(2)).

According to Article 32(4) the powers of the Supreme Court of India for the aforesaid purpose cannot be taken away by the Government; it cannot be even suspended except as provided by Article 359 read with Clause 4 of Article 32; these powers cannot be taken away or altered by any legislation. Such suspension can be ordered by the President of India where a proclamation of emergency is in operation. Kania, C. J. observed in *Gopalan's* case that the right to enforce the Fundamental Rights found in Part III by a direct application to the Supreme Court is removed from legislative control; it cannot be curtailed by the executive.

According to Halsbury's Laws of England : —

"The extraordinary remedy known as prerogative writs is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate."

In the same book the origin of prerogative writs under the English Law is given in these words :—

"The Common Law regards the king as the source of the fountain of justice, and certain ancient remedial processes of an extraordinary nature which are known as prerogative writs have from the times issued from the

court of King's Bench in which the Sovereign was always present in contemplation of law. The prerogative writs were issued only upon cause shown, as distinguished from the original or judicial writs which commence suits between party and party and which issue as of course. The court of King's Bench retained all the jurisdiction of the *curia regis* in so far as it was not distributed among the courts, and this jurisdiction, including the granting of the prerogative remedies, is now, under the Supreme Court of Judicature (Consolidation) Act, of 1925 (15 and 16 Geo V. C. 49), S. 18, vested in the High Court of Justice."

**History in India.**—The Presidency High Courts of Madras, Bombay and Calcutta had the jurisdiction to issue writs and they had inherited this jurisdiction from the old Supreme Courts established in the early days of the East India Company's Rule in India. But these Courts exercised this jurisdiction only within the territorial limits of their ordinary original civil jurisdiction. By Section 491 of the Code of Criminal Procedure, all High Courts were given jurisdiction in matters of writs of *habeas corpus*.

**Wider powers under Constitution.**—The power given by the Articles 32 and 226 is much wider than the power of British Courts under the jurisdiction of prerogative writs. In India it is not confined to granting writs of *habeas corpus*, *mandamus*, prohibition, *quo-warranto* and *certiorari*; it extends to any other directions or orders also suitable in the circumstances of the case. In *Rashid Ahmad vs. Municipal Board, Kairana*<sup>1</sup>, the Supreme Court observed :—

"The powers given to this court under Article 32 are much wider and are not confined to issuing prerogative writs only."

In *Chiranjit Lal vs. Union of India*,<sup>2</sup> Mukherjee J. of the Supreme Court observed :—

".....Article 32 of the Constitution gives us very wide discretion in the matter of framing out writs to suit the exigencies of particular cases."

1. A. I. R. 1950 S. C. 163=1950 S. C. R. 566.

2. A. I. R. 1951 S. C. 41=1950 S. C. R. 869.

In *Rashid Ahmad's* case the Supreme Court issued suitable directions to the Municipal Board, Kairana, under Article 32 to enforce the Fundamental Right of the Applicant under Article 19 (1) (g) to carry on his business as a wholesale vegetable and fruit seller which was infringed by the byelaws of the Municipal Board, although these directions were not covered by any of the five prerogative writs. The aforesaid view of the law was also accepted by the Supreme Court in *Mohammad Yasin vs. Town Area Committee, Jalalabad*<sup>1</sup>, and *Sri Ram vs. Notified Area Committee*<sup>2</sup>, and similar orders were issued granting the petition.

**Grounds of Limitations.**—In *Veerappa Pillai vs. Raman*<sup>3</sup> the Supreme Court observed, "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such an act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made."

The aforesaid observations show that although the High Court has very wide powers but they are not unlimited and they do not constitute it a Court of Appeal against the orders and judgments of every tribunal. The underlying idea of these two Articles is to provide a remedy for the gross injustice wherever it may be, either committed by an administrative body or officer or a judicial tribunal.

The grounds on which the High Court and Supreme Court can interfere are set forth in the above judgment of the Supreme Court and they are confined to the cases where an

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1. A. I. R. 1952 S. C. 115=1952 S. C. R. 572.

2. A. I. R. 1952 S. C. 118.

3. A. I. R. 1952 S. C. 192=1952 S. C. R. 583.

order is without any jurisdiction, or in excess of it, or in violation of the principles of natural justice, or the tribunal or administrative body has refused to exercise a jurisdiction vested in it by law or there is an error apparent on the face of the record. The High Court cannot consider the correctness of a decision on the merits except when the error is apparent on the face of the record. Thus the powers of the High Courts and the Supreme Court are not unlimited. Further in matters involving the use of discretion and judgment and entrusted to the authority of a certain body by the law, the High Court and the Supreme Court cannot direct such authority to pass a certain order on the merits, or itself pass any order on the merits.

On the above principles, if a Government makes an order under an Act which is void because it contravenes some Fundamental Rights, the High Court and the Supreme Court can declare the Act and the order as void and may pass an order against the Government prohibiting it and any of its officers from taking any action for enforcing the impugned order.

Even if the petitioner does not pray for the proper relief, the Court shall not refuse to grant the suitable writ, order or direction and it shall pass orders in proper forms as observed by Mukherjee, J. of the Supreme Court in *Cheranji Lal vs. Union of India*.<sup>1</sup> "Article 32 of the Constitution gives us very wide direction in the matter of framing out writs to suit the exigencies of particular cases, and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for."

The principles of English Law are to govern the issue of writs in India, provided they do not conflict with any provision of the Constitution of India or of any Indian Law. But the Courts must take into account the special circumstances and conditions in the country for exercising their discretion. Courts in India have always inclined to follow the British and American precedents.

**Articles 32 and 226.**—Article 32 makes the Supreme Court a guarantor and protector of the Fundamental Rights

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1. 1951 S. C. 41=1950 S. C. R. 869.

conferred by the Constitution. The right to apply to the Supreme Court for protection of a Fundamental Right is itself a Fundamental Right created by Article 32. Thus the Supreme Court cannot refuse to exercise this power and to entertain a petition for its protection. It is obligatory for the Supreme Court to interfere in case of breach of Fundamental Right. On the other hand the power given to the High Courts for its protection is only discretionary and is a part of its general jurisdiction to issue writs and orders for the enforcement of Fundamental Rights as well as for any other purpose. It is not necessary for a citizen to apply to the High Court first and thereafter approach the Supreme Court when his application has been rejected by the High Court. Both have got concurrent jurisdiction with the above variation but in ordinary practice it makes no difference. The power given to the High Courts is much wider and embraces also fields other than the Fundamental Rights.

In *Nain Sukh Das vs. The State of U. P.*,<sup>1</sup> the Supreme Court has stated :—

“Article 32 provides, in some respects, for a more effective remedy through this court than Article 226 does through the High Courts. But the scope of this remedy is clearly narrower in that it is restricted solely to enforcement of Fundamental Rights conferred by Part III of the Constitution.”

But the powers of the High Courts are much more extensive and they can issue writs and directions for enforcement of ordinary legal rights, while the Supreme Court cannot do so. But Article 139 provides, that the Parliament can confer by law on the Supreme Court power to issue directions and writs for the purpose of enforcing ordinary legal rights, rights other than the Fundamental Rights, and if and when it is done the powers of the Supreme Court and the High Court will be the same in this respect.

The Fundamental Rights can be altered or taken away by the amendment of the Constitution in accordance with the provisions of the Article 368. Thus the Right conferred by Article 32 is not eternal and unchangeable.

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1. A. I. R. 1953 S. C. 384=1953 S. C. R. 1184.

**Article 226.**—The High Court is given power to issue directions, orders or writs including writs in the nature of '*habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any of them' for the enforcement of Fundamental Rights or for any other purpose. The power of the High Courts for enforcement of Fundamental Rights has been fully discussed above. In this Part, writs, directions and orders for any other purpose are dealt with. Every High Court is given this power within its territorial jurisdiction only. It can issue writs, directions or orders within such jurisdiction to any person or authority including the Government, within such territories. By providing the words, "for any other purpose", in Article 226 the makers of the Constitution laid down new and wide powers for the High Courts in order to provide also a quick and inexpensive remedy wherever urgent necessity demanded immediate and decisive interposition. In this respect they desired to place all the High Courts in India in somewhat the same position as the Court of King's Bench in England.<sup>1</sup>

**Scope of power.**—The power conferred by Article 226 on the High Courts is of an extraordinary nature and it is to be resorted to in exceptional cases of an urgent nature where adequate relief cannot be got otherwise. This power does not convert the High Courts into Courts of Appeal, enabling them to examine correctness of the orders and decisions that are impugned. In *Veerappa vs. Raman and Ramn Ltd.*<sup>2</sup> the Supreme Court has observed as follows, laying down the grounds on which writs or orders may issue :—

"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to

1. A. I. R. 1953 S. C. 210=1953 S. C. R. 1144 ; *Election Commission of India vs. Saka Venkata Rao*.

2. A. I. R. 1952 S. C. 192=1952 S. C. R. 583.



enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.”

The power of the High Court is to be invoked and exercised only when there is an actual infringement of some right of a person<sup>1</sup> ; unless there is an actual infringement of some person's right, a writ cannot issue for merely establishing a legal right. Further the right must be clear and complete, disputed questions of fact or title cannot be decided under Article 226. It is to be exercised ordinarily for the enforcement of a right of the applicant or performance of a duty in his favour. But in cases relating to writs of *quo warranto* and *habeas corpus* the writs do not issue for aforesaid purposes. In proceedings relating to writs of *quo warranto*, the applicant does not seek to enforce any right of his as such nor does he claim performance of a duty in his favour ; he only questions the right of a person to hold a particular office and he seeks an order for ousting him from that office. Similarly, an application for *habeas corpus* can be made by a person other than the person detained.

Article 226 gives power to the High Court to issue writs and orders “for any other purpose.” The expression “for any other purpose” has a very wide range ; it means the enforcement of ordinary legal rights and duties which do not amount to Fundamental Rights. Moral rights and obligations and matters not falling within the region of propriety and decency but outside the region of law, cannot be dealt with under Article 226. This expression does not give unrestricted powers to administer equity not based on justiciable foundation. The Court will not exercise its power under Article 226 in a matter which it cannot deal with judicially. Existence of a legal right or a legal duty is essential for the exercise of the power under this Article, as observed by the Supreme Court in *State of Orissa vs. Madan Gopal*,<sup>2</sup> and unless such right or duty, personal or otherwise, is established no writ, order or direction can be issued.

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1. A. I. R. 1953 S. C. 210=1953 S. C. R. 1144 ; *Election Commission of India vs. Saka Venkata Rao*.

A. I. R. 1951 S. C. 217=1951 S. C. R. 344 ; *Janaradan Reddy vs. State of Hyderabad*.

2. A. I. R. 1952 S. C. 12=1952 S. C. R. 28.



Proceedings under Article 226 are of summary nature and complicated questions of fact, requiring mass of evidence cannot be gone into under this Article. In such cases the High Court is to leave the parties to pursue ordinary remedies.

The powers granted to a High Court under this Article are discretionary but the discretion is to be exercised in accordance with judicial considerations and well established principles<sup>1</sup> and it is expected that the High Courts will exercise a wise self-restraint, so as to avoid undue interference in the general administration of the country.

There is no universal or general principle which governs the grant or refusal of the writs, orders or directions. Although the powers are very vast, they are to be exercised with abundant caution and in the interest of justice in urgent cases.

It has been consistently held by the courts in India as well as in England and the United States of America that where another remedy, equally convenient, and adequate is available the High Court will not exercise their discretion and entertain the petition.<sup>2</sup> In *K. S. Rashid v. Income Tax Investigation Commission*<sup>3</sup> the Supreme Court has explicitly said :—

“The remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.”

It is the duty of the applicant to speak the truth through his application and affidavits in a proceeding under Article 226 and if he is guilty of the suppression of the material facts and of an attempt to mislead the court thereby, his application should be rejected, and the court should refuse to consider it on the merits.<sup>4</sup> This principle is applied by the English Courts also.

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1. A. I. R. 1951 S. C. 217=1951 S. C. R. 344, *Janardan Reddy vs. State of Hyderabad*.

2. A. I. R. 1952 S. C. 192=1952 S. C. R. 583 ; *Veerappa Pillai vs. Raman and Raman Ltd.*

3. A. I. R. 1954 S. C. 207 (210).

4. A. I. R. 1951 All. 776 (F. B.)=I. L. R. (1952) 2 All. 838 ; *Asiatic Engineering Co. vs. Achhru Ram*.

**Habeas Corpus.**—The writ of *habeas corpus* is the most valuable right guaranteed by the Constitution. It is a prerogative process for saving the liberty of person by affording him a convenient and effective means of immediate release from unlawful detention whether in prison or in private custody. By issuing this writ the court commands the authority or person who has detained that he should produce the person detained forthwith or at a particular time and day before it and it inquires into the causes of his detention or imprisonment. If the court finds that there is no legal justification for his detention, it orders his release. This writ is a remedy against all cases of wrongful deprivation of personal liberty.

*Habeas Corpus* is the abbreviated form for *habeas corpus ad subjiciendum*. *Habeas Corpus* means, "you have the body". It is the most important safeguards of the liberty of a citizen. In *Cox vs. Hakes*,<sup>1</sup> Lord Halsbury has observed :—

"For a period extending as far back as our legal history, the writ of *habeas corpus* has been regarded as one of the most important safeguards of the liberty of the subject. If upon the return to that writ it was adjudged that no legal ground was made to appear justifying detention, the consequence was immediate release from custody. If release was refused, a person detained might (see *exparte partington*) make a fresh application to every judge or every court in turn, and each court or Judge was bound to consider the question independently and not to be influenced by the previous decisions refusing discharge. If discharge followed, the legality of that discharge could never be brought in question. No writ of error or demurrer was allowed."

This writ has been the bulwark of British Democracy, and it was by virtue of this writ of *habeas corpus* that even the despotism of British Kings in the Seventeenth Century, England could not crush the spirit of liberty in the English people. The British Judiciary had always been very much jealous of retaining this power and it had always stood as the champion of the cause of a citizen's liberty which it has with great

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1. (1890) 15 App. Case 506 (514)=60 L. J. Q. B. 89.

vigilance and care guarded for centuries. The Laws of England and her judges have been very much jealous of any infringement of personal liberty which could be deprived only by due process of law. As early as 1627 A. D. Chief Justice Hyde, asserted the power of the court in *Darnell's* case in the following memorable words :—

“Whether the commitment be by the King or others, this court is a place where the King doth sit in person and we have power to examine it, and if it appears that any man hath injury or wrong by his imprisonment we have power to deliver and discharge him ; if otherwise, he is to be remanded by us to prison.”

This conception of the British Jurisprudence had been engrafted on the Indian legal system and to this effect a provision for writs in the nature of *habeas corpus* was made in Section 491 of the Code of Criminal Procedure. Now the Constitution has granted this power to the Supreme Court as well as to all the High Courts under Articles 32 and 226 respectively.

An application for *habeas corpus* can be made either by the person detained or by any relation or friend of the prisoner, but not by an absolute stranger or volunteer. The writ can be issued by Court only in those cases in which the person detained is within the territory over which that court has jurisdiction and it cannot be issued if the detained person is outside the territorial jurisdiction of the court. The writ cannot be issued to a person who is outside the court's jurisdiction, and it is meant for immediate service on the person or authority who has the custody of the person.

**Mandamus.**—*Mandamus* is another writ which can be issued by the Supreme Court and the High Courts under Articles 32 and 226 respectively. It is a high prerogative writ of a most extensive remedial nature ; it is a command issuing from the High Court of Justice, directed to any person, corporation, or inferior Court, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of public duty. Its purpose is to supply defects of justice ; and accordingly it is issued to the end that justice

may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing such right. It may be issued even in those cases where there is an alternative legal remedy but the mode of redress is less convenient, beneficial and effectual. In *R. vs. Barker*<sup>1</sup> Lord Mansfield has stated in these memorable words :—

“Wherever there is a right to execute an office, perform a service, or exercise a franchise (more specially, if it be a matter of public concern, or attended with profit) and a person is kept out of possession, or dispossessed of such right, and has no other specific legal remedy, this Court ought to assist by a *mandamus*, upon reasons of justice, as the writ expresses, and upon reasons of public policy, to preserve peace, order and good Government.”

“The interposing of this writ where there is no other specific remedy, is greatly for the benefit of the subject and the advancement of justice.

A *mandamus* is a prerogative writ ; to the aid of which the subject is entitled, upon a proper case previously shown, to the satisfaction of the court. The original nature of the writ and the end for which it was framed, direct upon what occasions it should be used. It was introduced to prevent disorder from a failure of justice and defect of Police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and wherein justice and good Government there ought to be one.”

The aforesaid principles of the English Law have been applied in this country to the issue of the writ of *mandamus* by the High Courts and the Supreme Court.

The history of the writ of *mandamus* and the principles applicable are described by Mr. Justice Ghose in *re Jatindra Mohan Sen Gupta*,<sup>2</sup> in the following words :—

“The writ is of very ancient origin, dating back at any rate, to the time of Edward II. In Bacon’s ‘ABRIDGE-

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1. (1762) 3 Bur. 1265 (1266—1267)=97ER. 823 (824).

2. A. I. R. 1925 Cal 48 (51,52).

MENT,' it is said to be founded on Magna Charta, by which the Crown was bound neither to deny justice to anybody nor to delay anybody in obtaining justice. "It seems originally," according to Mr. High (see High on Extraordinary Legal Remedies), "to have been one of that large class of writs or mandates, by which the Sovereign of England directed the performance of any desired act by his subjects, the word *mandamus* in such writs, letters or missives having given rise to the present name of the writ. These letters, missives or mandates to which the generic term *mandamus* was applied, were in no sense judicial writs being merely a command issuing directly from the Sovereign to the subjects, without the intervention of the Courts, and they have long become entirely obsolete."

"The term *mandamus*' seems gradually to have been confined in its application to the judicial writ issued by the King's Bench, which has by steady growth developed into the writ of *mandamus*. It is a high prerogative writ and is granted to amplify justice and to preserve a writ where there is no specific legal remedy. And it has been said that the Court in the exercise of this authority to grant the writ of *mandamus* will render it as far as it can be the supplementary means of substantial justice in every case where there is no other specific legal remedy for a legal right, and will provide as effectively as it can that others exercise their duty whatever the subject—matter is properly within its control.

"The writ of *mandamus*, being a high prerogative writ, it follows that it cannot be demanded *ex debito justitiae* but that it issues only in the discretion of the Court: (see the observations of Cockburn, C. J. in *R. vs. Garland* and also of Lord Chelmsford in *R. vs. All Saints Wigan*). It follows from the discretionary character of the process that the rights to be enforced must be of a public nature, affecting the public at large, and also those which although of a public nature, specially affect the rights of individuals. The person applying must show that he has a real and special interest in the subject—matter and a specific legal right to enforce: (see *R. vs. Guardians of*

*Lewisham Union*). In addition to these conditions precedent to the issue of the writ, it has been laid down from very early times that there must be a sufficient demand to perform the act sought to be enforced and a refusal to perform it. It is not indeed necessary that the word 'refuse' or any equivalent to it should be used, but that there should be enough to show that the party withholds compliance and distinctly determines not to do what is required of him. There must also be the possibility of effective enforcement of the writ and the writ will not issue if alternative remedies or remedy are or is open to the applicant."

Mr. Justice Mitter of the Calcutta High Court in *Carlsbad Mineral Water Manufacturing Co. Ltd. vs. H. M. Jagtiani*<sup>1</sup> made following observations about the principles governing the grant of the writ of *mandamus* :—

"The grant of an order or a writ of *mandamus* is, as a general rule, a matter for the discretion of the Court. It is said that it is not a writ of right and that it is not issued as a matter of course. Some of the conditions precedent to the issue of *mandamus* appear to be :—

- (i) the applicant for a writ of *mandamus* must show that there resides in him a legal right to the performance of a legal duty by the party against whom the *mandamus* is sought ;
- (ii) the court will not interfere to enforce the law of the land by the extraordinary remedy of a writ of *mandamus* in cases where an action at law will lie for complete satisfaction. In order, therefore, that a *mandamus* may issue to compel something to be done, it must be shown that the statute imposes a legal duty ;
- (iii) the writ is only granted to compel the performance of duties of a public nature ;
- (iv) the court will as a general rule, and in the exercise of its discretion, refuse a writ of *mandamus* when there is an alternative specific remedy at law which is not less convenient, beneficial and effective ;

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1. A. I. R. 1952 Cal. 315 (para. 12).



- (v) when *mandamus* is refused on the ground that there is another special remedy, it is a remedy at law that is referred to."

*Mandamus* is issued to any public officer, court of inferior jurisdiction or a corporation; it can issue to an executive or administrative authority. It is to be issued where the inferior tribunal has failed to decide a certain matter or to do a certain act which it is bound to decide or do; it must be incumbent on the officer or authority in his or its public character to do or to forbear from doing an act under any law in force for the time being. It is issued in order to do a particular thing or to abstain from doing a particular thing. But the *mandamus* does not lie to enforce a private right. A writ of *mandamus* is ordinarily issued to a public officer in order to compel him to discharge his authority obligations, and before a court would issue such a writ it must ascertain what the statutory obligations of the public officer are and whether he has failed to discharge those obligations. Unless the officer is under an obligation to do something or to forbear from doing something, the court shall not issue a writ of *mandamus*. In the matter of *Robert L. Cutting*<sup>1</sup> the Supreme Court of America has observed :—

"The office of a *mandamus* is to compel the performance of a plain and positive duty. It is issued upon the application of one who has a clear right to demand such a performance, and who has no other adequate remedy."

Where there is no duty but only a power to do thing, *mandamus* will not lie to enforce the exercise of the power unless the power is coupled with duty to exercise it.

In Halsbury's Laws in England (2nd Edition) Volume 9 page 763 it is stated as follows :—

"The writ of *mandamus* will not be granted against one who is an inferior or ministerial officer, bound to obey the orders of a competent authority, to compel him to do something which is a part of his duty in that capacity."

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1. (1877) 24 Law Ed. 49 (50, 51)=94 U. S. 14.



But ministerial acts which are enjoined by law and are not acts which are to be done in obedience to another officer, are within the purview of the writ of *mandamus*.

The duty sought to be enforced must be one, directly imposed by law and not by private contracts between parties; in the latter case no *mandamus* can issue. *Mandamus* does not lie to enforce a moral duty. It will not issue in discretionary matters where it is left by the law to the discretion of the officer or authority to perform a certain act or not to perform it. The law must not only authorise the act but must require it to be done<sup>1</sup>. In *R. v. G. W. Railway*,<sup>2</sup> Lord Coleridge, C. J., has observed :—

“Where there are enabling powers, they are enabling only, they are not compulsory, if they merely enable, as they profess to do, a railway company to carry on its line.”

**Prohibition.**—Prohibition is the other writ mentioned in Articles 32 and 226. Writ of prohibition is a judicial process issuing out of a court of superior jurisdiction, directed to an inferior court for the purpose of preventing the inferior court from usurping a jurisdiction with which it is not legally invested or to compel courts entrusted with judicial duties to keep within the limits of their jurisdiction. Atkin, C. J., in *Rex vs. Electricity Commissioners*,<sup>3</sup> has observed :—

“Both writs (prohibition and *certiorari*) are of great antiquity forming part of the process by which the King's Courts restrained courts of inferior jurisdiction from exercising their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; *certiorari* requires the record or the order of the court to be set up to the King's Bench Division, to have its legality enquired into, and if necessary, to have the order quashed.”

Thus a writ of prohibition is issued for preventing a tribunal from continuing a process pending in it on the ground that it has no jurisdiction to hold the proceeding. It is a preventive

1. A. I. R. 1950 Pat 387 (Pr. 9) (F. B.)=I. L. R. 29 Pat 491 *Bagaram vs. State of Bihar. Ex Parte Bassetti*, (1857) 119 ER 1251.

2. (1893) 12 L. J. Q. B. 572=19 L. T. 572.

3. (1924) 1 K. B. 171 (204)=93 L. J. K. B. 390.

writ, unlike, the writ of *certiorari* which is remedial rectifying an order or proceeding. Writ of prohibition is the converse of writ of *mandamus* ; by prohibition the court prevents an inferior court or tribunal from doing something which it has not the power to do, and the court uses the writ of *mandamus* to compel an inferior court or a tribunal to do something which it is required by law to do.

Writ of prohibition lies only against judicial and quasi-judicial authorities. It does not lie against a public authority acting purely in an executive or administrative capacity. In *Rex. vs. Electricity Commissioners*, Atkin, C. J. has observed :—

“It is to be noted that both writs deal with questions of excessive jurisdiction and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a court of justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognized as, Courts of Justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King’s Bench Division exercised in these writs.”

The grounds on which prohibition may be applied for are very clearly laid in *Burder vs. Veely*,<sup>1</sup> by Lord Denman, C. J. in the following words :—

“The question then remains, what are the defects that authorise and require us to issue the writ of prohibition ? The answer is, that they are in every case of such a nature as to show a want of jurisdiction to decide the case brought before them :—*Gardner vs. Booth*.<sup>2</sup> In whatever stage that fact is made *manifest* to us, either by the Crown, or by any one of its subjects, we are bound to interpose. The misconstruction of an Act is one of these defects ; the enforcement of a tax imposed without lawful

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1. 113 E. R. 801 (802, 813)

2. 91 E. R. 464.

authority is assuredly another; and such a tax we deem a church rate to be which is laid by Parish officers, not only without the concurrence of the Parish, but in defiance of their declared refusal to concur. This is no irregularity which may be waived or cured, leaving the principal matter substantially complete though attended with unusual and informal circumstances, but it is a proceeding altogether invalid, and a church rate is nothing but the name."

Prohibitions is a writ of right and not merely a discretionary remedy. It is to be granted *ex debito justitiæ* when the inferior tribunal is either acting in excess of its jurisdiction or without jurisdiction. It is not a mere matter of inclination and will be granted or withheld at pleasure. Whenever a court usurps a jurisdiction that does not belong to it, a prohibition is granted *ex debito justitiæ* and for the very purpose of correcting such an usurpation and preserving the subject court within their proper limits.

**Quo Warranto.**—This is also one of the writs mentioned in Articles 32 and 226 of the Constitution. By issuing this writ the court inquires from a person who claims or occupies an office, franchise or liberty, by what authority he supported his claim in order that the right to the office or franchise might be determined. *Quo warranto* lies in respect of a public office as well as a franchise or privilege claimed by a person.

The writ of *Quo warranto* lies against a person who claims or usurps an office, franchise or liberty. It is a remedy by which the court tries the civil right to a public office or the title of the person to the office which he is exercising. But this writ is not available in respect of office of a private nature, e.g., the managing committee of a private school constituted in accordance with their domestic rules, the master of a private school founded by a private individual.

An application for a writ of *Quo warranto* challenging the validity of an appointment or election to an office of a public nature can be instituted by any private person, although he is not personally aggrieved or interested in the matter. The order that is passed in such a writ is an order ousting the occupant of an office from that office.

**Certiorari.**—This is the most frequently used writ provided in Articles 32 and 226 of the Constitution of India. In England the writ of *certiorari* is a judicial writ of great antiquity and if the extraordinary process by which the court of King's Bench Division exercises control over the acts of judicial and quasi-judicial tribunals and puts a restraint on their acting in excess of their jurisdiction or without any jurisdiction. By this process the High Court directs the inferior tribunals to send the records of proceedings or orders and judgments to it and if the High Court finds that the tribunal acted in excess of jurisdiction or without any jurisdiction it quashes them. By virtue of this writ the High Court exercises a supervision over all the tribunals within its territory whose function is judicial or quasi-judicial.

In *R. vs. Electricity Commissioners*, Atkin, L. J. observed :

“Both writs (prohibition and *certiorari*) are of great antiquity, forming part of the process by which the King's Courts restrained courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; *certiorari* requires the record or the order of the Court to be set up to the King's Bench Division, to have its legality enquired into, and if necessary, to have the order quashed.”

The writ of *Certiorari* only issues to a judicial or quasi-judicial body and not to an executive or administrative body. It can be issued only in respect of judicial or quasi-judicial proceeding only and not in respect of executive or administrative proceedings. In England the writ of *certiorari* has been issued to Rating Authorities, Licensing Justices, Electricity Commissioners, the Board of Education, the General Medical Council, the Inns of Court, Assessment Committees, the Commissioner of Taxation.

With the rapid growth of various tribunals, exercising almost judicial functions, it was absolutely necessary that some form of check and control over their powers should be established especially when they were vested with large powers of affecting the rights of subjects. This has been done by making

provision in Articles 32 and 226 for issuing writs in the nature of *certiorari*. It acts as check against the arbitrariness of those tribunals and safeguards the rights of citizens.

A writ of *certiorari* will lie only if the decision by a tribunal has affected legal rights and liabilities of a person ; it will not lie in respect of such rights as honours or precedence, or a right to receive 'thirds' in a particular order of priority.

A writ of *certiorari* may be issued on the following grounds: —

- (a) That the inferior court\* or tribunal has acted without jurisdiction or in excess of it<sup>1</sup> (*Parry & Co. vs. Commercial Employees' Association*) or
- (b) That it has erroneously decided a collateral question which has led to an assumption of jurisdiction which did not exist.
- (c) That the order of the inferior tribunal is erroneous on the face of the record.
- (d) That the procedure followed by a tribunal is contrary to the principles of natural justice, deciding without hearing a party or the judge having personal interest in the matter or the judge being enmical to a party.
- (e) That the order of the tribunal is vitiated by fraud, perjury (*R. vs. Leicester Recorder*),<sup>2</sup> malafides, collusion, (*R. vs. Alleyne*)<sup>3</sup> or corruption, (*R. vs. Cambridgeshire Justices*).<sup>4</sup>
- (f) That the tribunal has refused to exercise a jurisdiction vested in it by law and to decide a matter which it was bound to decide, (*Board of Education vs. Rice*).<sup>5</sup>

Mere erroneous order is no ground for interference by a writ of *certiorari* ; only erroneous orders affecting jurisdiction

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1. A. I. R. 1952 S. C. 179 (Pr 11)=1952 S C R 519.
  2. (1947) 1 All ER 928=1947 LJR 1045.  
(1848) 116 ER 965=12 QB 527.
  3. (1854) 119 ER 72.  
(1848) 116 ER 965=12 QB 527.
  4. (1835) 111 ER 729 (733).
  5. (1911) 1911 App. Cas. 179 (182)=80 LJKB 796.

may be quashed by a writ of *certiorari*. In *Parry & Co. vs. Commercial Employees' Association*,<sup>1</sup> the Supreme Court has observed as follows :—

“At the worst, he (the Labour Commissioner) may have come to an erroneous conclusion, but the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Labour Commissioner to decide and it does not relate to anything collateral, an erroneous decision upon which might affect his jurisdiction. The records of the case do not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner which goes contrary to the principles of natural justice. Thus, there was absolutely no ground here which would justify a superior court in issuing a writ of *certiorari* for removal of an order or proceeding of an inferior Tribunal vested with powers to exercise judicial or quasi-judicial functions. What the High Court has done really is to exercise the powers of an Appellate Court and correct what it considered to be an error in the decision of the Labour Commissioner. This obviously it cannot do.” In *Veerappa vs. Raman and Raman Ltd.*,<sup>2</sup> the Supreme Court laid down :—

“Such writs, as are referred to in Article 226 are obviously intended to enable the High Court to issue them in rare cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not as wide or large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.”

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1. A. I. R. 1152 SC 179 (Pr 11)=1952 S. C. R. 519.  
 2. A. I. R. 1952 S. C. 192 (Pr. 20)=1952 S. C. R. 583.



Mere non-compliance with the rules of procedure is no ground for granting one of the writs and much less so the writ of *certiorari*, and it was so held by the Supreme Court in *Janardan Reddy vs. State of Hyderabad*<sup>1</sup>.

The writ of *certiorari* is available only if the applicant has no other equally convenient, effective and adequate remedy for redressing his grievance against an order or judgment. If another remedy is open, no writ will lie unless the aggrieved party has tried that remedy but failed, and only then a writ will lie against the original order as well as the appellate revisional order.

The court exercising *certiorari* jurisdiction is not a Court of Appeal. It can only quash an order or judgment but it cannot substitute its own judgment in its place on the merits of the case, nor can it direct the inferior court or tribunal to decide a case in a particular way or to pass a particular order<sup>2</sup>.

## CHAPTER IX

### Miscellaneous.

**Article 33. Power of Parliament to modify the rights conferred by this Part in their application to Forces.**—Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Article 33 prescribes an exception to the general rule laid down in Article 13 clause (2) that the State shall not make any law which takes away or abridges the Fundamental Rights

1. A. I. R. 1951 S. C. 217 (Pr. 6)=1951 S. C. R. 344).

2. (1947) 2 All. E. R. 838=1948 K. B. 397, *R. vs. Willesdon Justice*.

(1879) 4 App. Cas. 30 (39)=39 L. T. 453 *Overseers of the Poor of Walsall vs. London and North Western Railway Co.*

A. I. R. (1952) S. C. 192=1952 S. C. R. 583 *Veerapa vs. Raman and Raman Ltd.*



guaranteed by Part III of the Constitution. Article 33 has reserved powers for the Parliament to make laws which will abrogate or abridge the Fundamental Rights in case of members of the Armed Forces that is the naval, military or air forces, as well as the police force charged with the maintenance of public order. This provision is made in order to maintain discipline in forces and so that they may discharge their duties properly. The State Legislatures are not given any such powers. Special laws and special courts are very necessary for the army, navy and air force as well as the police from the point of view of discipline and proper discharge of duty; by this exception Military Laws and Military Courts can validly function and they will not offend the Constitution. Deprivation of the most valuable Fundamental Rights in case of the Forces is an inevitable concomitant of political organization.

**Article 34. Restriction on rights conferred by this Part while law is in force in any area.**—Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Article 34 makes provision that Parliament can make law giving protection to the acts of officers and granting them indemnity for any act done by them for maintaining or restoring order in any area where martial law was in force. The Parliament is further empowered to make law validating punishments, forfeitures and other acts under martial law. Thus, this Article provides another exception to the general rules relating to Fundamental Rights guaranteed by the Constitution which would not be altered, abridged or destroyed according to Article 13 (2). This Article deals with the situation in times of martial law in any part of the country. In such times the ordinary law of the land is superseded by the military law and civil authorities give way to the military authorities.

But for this Article, all those acts of military authorities in times of martial law would be unconstitutional and a very

grave situation might arise. This provision is made in order to legalise infringements of the Civil Rights of the people by military authorities during the time of disturbances.

**Article 35. Legislation to give effect to the provisions of this part.**—Notwithstanding anything in this Constitution—

- (a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—
  - (i) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by parliament ; and
  - (ii) for prescribing punishment for those acts which are declared to be offences under this Part ; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii) ;
- (b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament.

*Explanation.*—In this Article, the expression “law in force” has the same meaning as in Article 372.

According to this Article the Parliament alone can make laws and no State Legislature can make laws in respect of the following matters:—

- (a) matters under Article 16 (3) prescribing a period of residence within a State as a qualification for employment in a State;
- (b) matters under Article 16 (3), empowering courts other than the Supreme Court and High Courts to issue writs for enforcement of Fundamental Rights;

- (c) matters under Article 33, abrogating or restricting Fundamental Rights of armed forces and the police ;
- (d) matters under Article 34, providing for indemnity and validation of acts after martial law;
- (e) matters under Article 17 prescribing punishment for enforcement of any disability arising out of untouchability ;
- (f) matters under Article 23 (:) prescribing punishment for 'begar', forced labour and traffic in human beings.

This Article further provides that laws in existence dealing with the aforesaid six matters before the coming into force of the Constitution shall continue until the Parliament makes other laws ; thus the validity of those laws was saved even though they may not have been made by the Parliament. Thus the Army Act (Act 8 of 1911), the U. P. Removal of Social Disabilities Act (Act 14 of 1947) and several other Acts remained valid even after the Constitution came into force.

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## PART IV

### Directive Principles of the State Policy

**Ideals before the Nation.**—The Directive Principles of State Policy enunciated in Part IV of the Constitution in Articles 38 to 51 provide an amplification of the objectives of the State as given in the Preamble to this Constitution for guiding the destiny of our nation. They are positive commands to the State. They are valuable in the sense that they have set a goal before the future law makers and administrators in the country, and define the character of the State and the destiny of its people in the years to come. Under this Constitution future is not left free to weave its own course, according to the vagaries of the times, but its compass is set in a particular direction, pointed out by the Directive Principles and the Preamble to the Constitution. They are like two mirrors in which one can see the future phases of our society as well as our Government. The Constitution makers, believing in creating a new pattern of society and State by peaceful evolution rather than turbulent revolution, were right in setting forth the ideals which they desired to be achieved in the years to come but they could not immediately have without upsetting the entire fabric of our social system, creating economic disorders and ruining even the existing prosperity of the land and the people. This they did by making provisions for these high and notable ideals in the Preamble and the Directive Principles of State Policy.

**Article 36. Definition.**—In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

**Article 37. Application of the principles contained in this Part.**—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country

and it shall be the duty of the State to apply these principles in making laws.

**Fundamental character in application but not enforceable by court.**—The Constitution has, by Article 37, laid down that the provisions in Part IV regarding Directive Principles of State Policy are not directly enforceable in a court of law, but it requires that these Principles are Fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws and in governing the country. In spite of these Principles not being justiciable or enforceable through a court of law, they express the salient features of the conception of the Constituent Assembly about the new social and economic order which it desired to introduce through the channels of the Constitution. The importance of these Directive Principles is very well described by Dr. Ambedkar in the following memorable words in his speech at the time of introducing the Draft Constitution in the Constituent Assembly :—

“The Directive Principles are like the Instruments of Instructions which are issued to the Governor-General and the Governors of the Colonies and to those of India by the British Government under the 1935 Act. What is called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Whoever captures power will not be free to do what he likes with it. In the exercise of it he will have to respect these Instruments of Instructions which are called Directive Principles. He cannot ignore them.”

Alan Gledhill in his work ‘The Republic of India’ at page 161 observes :—

“It would be superficial to dismiss these precepts as good resolutions fit only for paving stones on the broad and primrose strewn way. The lives of countless individuals have been shaped and redirected by moral precepts infringing upon their minds, and it is not difficult to find instances of similar precepts directing the course of history of nations.”

It is undoubtedly a positive gain to have well defined aims of public policy consecrated by the Constitution, attaching san-

city to them. The Constitution, being given to the people by themselves, the Directive Principles are their solemn declarations of the aims and aspirations of the Indian people set forth after mature deliberations, and they cannot be lightly discarded by future administrators and legislators of this land so long as the Constitution stands. These principles may not have the sanctions of courts, but they are bound to have greater sanctions of the people's opinion as expressed in elections. The success and failure of the Government may be tested by the people in the light of the fulfilment or otherwise of these principles and objectives.

**British Constitution.**—The whole British Constitution is based on Conventions and no Government has dared to touch them, because the sanction of public opinion is behind it, although these Conventions are not enforceable through courts. It has worked with absolute efficacy for centuries without the sanction of direct enforceability in a court of law. Similarly, the Directive Principles of the Constitution, being the voice of the people of India, are enforceable not through the courts but by the public opinion. It is the success in implementing these principles into action by which the vigilant people will judge a Government and at the periodical elections to Legislatures and other bodies, this opinion can be exhibited in supporting or overthrowing the Government. Then such sanctions have been effective in England, there is no reason why with the growth of healthy political life in India, they should not be effective here. The entire responsibility lies on the shoulders of the people and the leaders of the country. It is up to the people of India to make the best of their Constitution and make its idealism a blessing and not a mockery.

The Directive Principles enunciate the heads of national policy formulated not by a particular political party or a legislative body, but by a national convention of people's representatives, assembled in a solemn conclave; they do not represent the temporary will of a majority in the Legislature but the deliberate wisdom of the nation to settle the paramount and permanent law of the land. It was so observed by Kania, C. J. of the Supreme Court in *Gopalan vs. State of Madras*.<sup>1</sup> Thus

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1. A. I. R. 1950 C. S. 27 (42)=1950 S. C. R. 88.



the social, political and economic ideology expressed in the Preamble and the Directive Principles is intended to impart continuity to the national policies, unaffected by the vicissitudes of the fortunes of political parties, who might get into or go out of power from time to time.

**Its value to courts in interpretation.**—However, a Court of Law can take cognizance of the Preamble as well as the Directive Principles for understanding or interpreting the meaning of the provisions of the Constitution which are doubtful or ambiguous. Article 19 authorises the imposition of reasonable restrictions on the freedoms guaranteed therein, and in considering what is reasonable restriction, the provisions relating to Directive Principles are to be looked into and regarded as reasonable by the court. Similarly when a court has to consider whether a particular matter is for the public benefit or in public interest or for public purpose (as required in Articles 19 and 31) the court can make a reference to the Directive Principles.<sup>1</sup> Thus these Principles have a legal importance too apart from their political and psychological value, and they may be taken into consideration by the courts in certain cases as mentioned above.

The Directive Principles are expressed in the Constitution in Articles 38 to 51.

**Article 38. State to secure a social order for the promotion of welfare of the people.**—The State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Article 38 lays down the first Directive Principle that the State shall promote the welfare of the people by securing and

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1. A. I. R. 1951 S. C. 318=1951 S. C. R. 682, *State of Bombay vs. F. N. Balsora*.

A. I. R. 1952 S. C. 252=1952 S. C. R. 889, 1020, 1056, *State of Bihar vs. Kameshwar Singh*.

A. I. R. 1951 All. 674=I. L. R. (1952) 2 All. 46 (F. B.) *Suryapal Singh vs. U. P. Government*.

A. I. R. 1952 All. 753 (F. B.) *Budhu vs. Municipal Board, Allahabad*.  
*In re Kerala Education Bill*, A. I. R. 1958 S. C. 956.



protecting a social order based on social, economic and political justice. This Article repeats the ideal set forth in the Preamble and it emphasises and clarifies those objectives. It sets forth a very noble and high ideal for all times to come and it is so wide as to suit the exigencies of a just changing society in a world where old values and conceptions are giving way to new ones in social, economic as well as political fields. It heralds the restoring in this country of the socialistic pattern of society and envisages an era of people's welfare.

**Article 39. Certain principles of policy to be followed by the State.**—The State shall, in particular, direct its policy towards securing :—

- (a) that all citizens, whether men and women have the right to an adequate means of livelihood ;
- (b) that the ownership and control of the productive wealth *i.e.*, the material resources of the community are so distributed as best to subserve the common good ;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment ;
- (d) that there is equal pay for equal work for both men and women ;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength ;
- (f) that childhood and youth are protected against exploitation and against moral and material abandonment.

The second Directive Principle is laid down in Article 39 in a very comprehensive manner, and the policy of the State is to be directed in accordance with it.

This Article emphasises the principle of justice to workers by granting them right to work and earn livelihood, an ade-

quate wage for the work and reasonable and human conditions of work. It also lays down that the wealth is to be so distributed as to serve the society as a whole. Welfare of workers and a healthy social distribution of wealth is to be the prime objective of the State. This new social order to be achieved is very near socialism. This Article also emphasises equality between men and women in regard to the right to an adequate means of livelihood and also in regard to rate of payment for work.

**Article 40. Organisation of village panchayats.**—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

The third Directive Principle as laid down in Article 40 is the organisation of village panchayats so as to function as units of self-government. This reflects the structure of a decentralised government which the Constitution seeks to establish in due course, and it is in keeping with the Gandhian political philosophy of decentralised, self-sufficient units of small areas.

**Article 41. Right to work, to education and public assistance in certain cases.**—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

The fourth Directive Principle as enunciated in Article 41 prescribes a duty to the State that it shall find work for all people and provide for education, and relief in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. These are the common features of all modern Constitutions, inhabited in the conception of a truly democratic and welfare State.

**Article 42. Provision for just and humane conditions of work and maternity relief.**—The State shall, make provision for securing just and humane conditions of work and for maternity relief.

The fifth Directive Principle, stated in Article 42, makes it a duty of the State to make provision for just and humane conditions of work and for maternity relief. The places of work are to be such as not to be harmful to the health of the worker; on account of economic poverty, a person cannot be made to overwork or work beyond his physical capacity; amenities are to be provided for recreation and medical treatment. Maternity relief is to be given to women. Tender age of children is to be guarded. The Constitution lays special emphasis on protecting the health of workers.

**Article 43. Living wage, etc., for workers.**—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

The sixth Directive Principle, given in Article 43, prescribes that the State shall secure to all work, a living wage, conditions of work ensuring a decent standard of living and full enjoyment, leisure and social and cultural opportunities. The State is to promote cottage industries on an individual or co-operative basis in rural areas. Thus, the Constitution makes an attempt to improve the lot of the poor worker and to raise his economic and cultural standard of life. The welfare of the worker was the dearest thing to the Constitution makers.

**Article 44. Uniform civil code for the citizens.**—The State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India.

The seventh Directive Principle incorporated in Article 44 prescribes that the State shall secure a uniform Civil Code for all the citizens. Such a uniform law is necessary in order to weld the whole country into an unbreakable unity by providing uniformity in the life of the people. National solidarity and unity is most essential for the progress of the people. At present there are separate systems of personal laws in regard to marriage, divorce, succession, inheritance, adoption and other matters, according to various religious communities.

Territorial laws are necessary in the national interest. In modern times in every country there is a trend for territorial laws and even modern Turkey has established such uniform laws. Such a Code is necessary for the Constitution provides for a common citizenship.

**Article 45. Provision for free and compulsory education for children.**—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

The eight Directive Principles in Article 45 cast the most coveted duty on the State to make provision within ten years for free and compulsory education for children up to the age of fourteen years. The time limit of ten years is also fixed for achieving this goal. It is the duty of the State to take care of the children and to give them proper training for the future of a country depends upon them.

**Article 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.**—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

The ninth Directive Principle, described in Article 46, provides that the State shall take special care to promote the educational and economic interests of the weaker sections of the people, in particular the Scheduled Castes and the Scheduled Tribes, and it shall protect them from social injustice and all forms of exploitation. This Article aims at removing backwardness of certain communities in this country, which is a curse to our civilisation and a weakness for the nation.

**Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition

of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

The tenth Directive Principle, contained in Article 47, is a command to the State to raise the level of nutrition and the standard of living and to improve public health, and to introduce prohibition of the consumption of intoxicating drinks and drugs injurious to health. The Constitution aims at having good and healthy citizens of good morals.

**Article 48. Organisation of agriculture and animal husbandry.**—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines, and shall in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

The eleventh Directive Principle, expressed in Article 48 requires the State to improve the breeds of milch and draught cattle and prohibit their slaughter. It also requires the State to raise the agricultural and animal husbandry on modern scientific lines. It aims at providing good nutrition to the people.

**Article 49. Protection of monuments and places and objects of national importance.**—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

The twelfth Directive Principle in Article 49 requires the State to protect monuments and places and objects of artistic or historic interest, declared by Parliament to be of national importance.

**Article 50. Separation of judiciary from executive.**—The State shall take steps to separate the judiciary from the executive in the public services of the State.

The thirteenth Directive Principle, provided by Article 50, requires the State to separate the Judiciary from the Executive in the public services of the State. This separation had been aimed at for a very long time by the Indian Leaders and it is

absolutely necessary that judiciary should be independent of the executive and should not have any connection with it, and only then democracy, based on rule of law, can truly and properly function. Montesquein has stated, "there is no liberty, if the power of judging be not separated from the legislative and Executive powers."

The independence of judiciary is required to secure an impartial trial and to secure the effectiveness of another Constitutional bulwark of freedom, the right of suing or prosecuting Government officials. If the conduct of one member of the Executive is judged by another, or by a judge practically under its control the *esprit de corps* which exists in the Executive as a body, and its natural tendency to resist any restriction on its powers, would diminish the complainant's chance of obtaining an impartial hearing and adequate redress. Hence the principle of separation of Judiciary from the Executive is a fundamental principle of universal application.

**Article 51. Promotion of international peace and security.**—The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

The fourteenth Directive Principle contained in Article 51 defines the foreign policy and foreign relations of this country and gives a directive to the Executive of the State. According to this directive, the State shall (a) promote international peace and security, (b) maintain just and honourable relations between nations, (c) further respect for International Law and treaty obligations, and (d) encourage settlement of international disputes by arbitration.

Promotion of peace throughout the world has been an ancient tradition and illuminating heritage of the Indian



people from the past. In the days of Ashoka and other monarchs Indian people went out into other countries as emissaries of peace and goodwill, and never did an Indian monarch send his armies to conquer lands and people beyond the borders of the Indian Peninsula. True to this great heritage the people of India have resolved that they aspire for maintaining peace among nations and now the Indian Government under the leadership of Pandit Jawaharlal Nehru has proclaimed to the world that it stands for peace, prosperity and co-existence with other nations and it abhors the war psychology of the Western nations, dividing the world into blood thirsty camps. Having fought the battle of freedom nonviolently and succeeded in the titanic struggle against the mighty British Imperialism, it was most befitting for the nonviolent people of India to advocate the reign of peace and security throughout the World and to actively work for achieving this ideal.

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## PART V

### THE UNION

#### CHAPTER I

##### THE EXECUTIVE

##### **The President of India.**

**The President and his powers.**—There shall be a President of India and the Executive power of the Union shall be vested in him. The Supreme Command of the Defence Forces of the Union shall also be vested in him and it shall be exercised by him in accordance with the law. But the Parliament is authorised to confer by law any of the aforesaid functions on authorities other than the President.

The President is a Constitutional Ruler. His oath under Article 60 emphasises his moral duty to preserve, protect and defend the Constitution, and if he acts contrary to it, he shall render himself liable to impeachment under Article 61. Constitution is the only limitation on the exercise of his powers and the Legislature has no power to regulate or restrict his constitutional powers.

The Executive power of the Union consists of (a) Administrative power, *i. e.*, the execution of the laws and the administration of the Government, (b) Diplomatic power, *i. e.*, the conduct of foreign affairs, (c) Military power, *i. e.*, the organisation of the Armed Forces and the conduct of war, (d) Legislative power, *i. e.*, the summoning, prorogation etc. of the Legislature, and (e) Judicial power, *i. e.*, the granting of pardons, reprieves, etc. to persons convicted of crime. Under Article 73 Executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws, but such Executive power does not extend in any State, specified in Part A or Part B of the First Schedule, to matters in the concurrent list over which the Union and the States both are competent to legislate.

(a) **Administrative powers.**—All executive action of the Government of India is taken in the name of the President [Article 77(1)] and all orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified by him [Article 77(2)]. All contracts made in the exercise of the Executive power of the Union or of a State shall be made by the President and all such contracts and assurance of property made in the exercise of that power shall be executed on behalf of the President or by such persons and in such manner as he may direct or authorise, [Article 299(1)].

The President has the power to appoint the Prime Minister of India and other Ministers of the Union (Article 74), the Attorney General for India (Article 76), the Comptroller and Auditor General of India (Article 148), the Judges of the Supreme Court (Article 124), the Judges of the High Courts of the States (Article 217), the Governor of a State (Article 155), an Inter-State Council (Article 316), the Finance Commission (Article 280), Election Commissioners [Article 324(2)], Special Officer for Scheduled Castes and the Scheduled Tribes [Article 338(1)], and a Commission on Languages [Article 344(1)]. No other appointments are left in his hands.

The President has power to remove his Ministers [Article 75(2)], the Attorney General for India [Article 76(4)], and the Governor of a State [Article 156 (1)].

But the Indian President is not a real Head of the Executive like the American President; he has in reality no executive function to discharge nor has he the power of control and supervision over the Departments of the Government as the American President possesses. The various Departments of the Union Government are to be carried on under the control and responsibility of the respective ministers-in-charge, the President remains the formal head of the administration. Yet all officers of the Union shall be his subordinates and he shall have a right to be informed of the affairs of the Union. The Ministers hold office during his pleasure (Article 75) and they remain subordinate to him in spite of their responsibility to the Legislature.

**(b) The Diplomatic Powers.**—The President of India represents India in International affairs and has the power of appointing Indian representatives to other countries and of receiving diplomatic representatives of other States. The power of negotiation of treaties and agreements with other countries, subject to ratification by Parliament belongs to the President. Foreign representatives are accredited to the President and they present their credentials to him. In matters of foreign relations with other States the President stands as the symbol of the State, and all acts are performed in his name.

**(c) Military Powers.**—The President is the Supreme Commander of the Defence Forces, but the exercise of this power is to be regulated by the law made by the Parliament [Article 53 (2)]. Parliament can make laws for the raising, training, maintenance, control and employment of the Defence Forces; it can lay down by law the method of declaring war and making peace. The Indian President has no power to declare war or employ forces without or in anticipation of the sanction of the Parliament. In this respect the military powers of the Indian President are much less than those of either the American President or of the English Crown. The Indian President cannot even assume emergency powers such as the American President did during the World Wars, in exercise of his powers as Commander-in-Chief.

**(d) Legislative Powers.**—Like the British King, the President of India is a vital part of the Union Parliament. His powers are as follows :—

- (i) The power to summon, prorogue and dissolve Parliament. [Article 85(2)].
- (ii) The right of opening address to Parliament. [Article 87(1)].
- (iii) The right to address and send messages to the Parliament. [Article 86].
- (iv) The power to cause certain reports and statements to be laid before Parliament, so that Parliament may have the opportunity to take its action upon them, such as (a) the Annual Financial Statement under Article 112 (1) and Supplementary Budget, if any,

Article 115(1) ; (b) the Report of the Comptroller and Auditor General of India relating to the accounts of the Government of India, Article 151 (1) ; (c) the report of Special Officer for Scheduled Castes and Scheduled Tribes, under Article 338 (1).

- (v) The power of sanctioning introduction of certain legislative measures, such as for alteration of State boundaries (Article 3) ; Money Bills (Article 117) ; Bills involving expenditure, Article 117 (3) ; Bills affecting taxation in which the States are interested, Article 27 (1) ; State Bills imposing restriction on freedom of trade.
- (vi) The power of assent to legislation and the power to veto Union Bills and reserved State Bills.
- (vii) The power to legislate by ordinances during recess of Parliament to meet with any circumstances that require immediate action. (Article 123).

Such an ordinance shall have the same force and effect as Acts of the Parliament (vide Article 123 (2)). It shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period, resolutions disapproving it are passed by both Houses. It may be withdrawn at any time by the President. The President can pass ordinances only in respect of those matters in regard to which the Parliament can pass a law.

**(e) Judicial Powers.**—The President has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence in (i) all cases where the punishment or sentence is by a Court Martial; or (ii) where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends ; or (iii) where the sentence is a sentence of death. (Article 72).

Under Article 143 the President, as the Executive Head of the Union has the power to refer questions of law or fact for the opinion and report of the Supreme Court if such questions

are of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it. This is known as the consultative power of the President of India.

**(f) Emergency Powers.**—The President has extraordinary powers to deal with an emergency, such as war or external aggression or internal disturbance by reason of which the security of India or any part thereof is threatened, or the failure of the constitutional machinery in a State owing to some other cause, or a financial crisis. These are the most important powers in the hands of the President which justify the existence of this office.

If the President is satisfied that a grave emergency exists whereby the security of India (or any part thereof) is threatened, whether by war or external aggression or internal disturbance or that a situation has arisen whereby the financial stability or credit of India (or any part thereof) is threatened, he may, by a proclamation, make a declaration to that effect, even before the actual occurrence of war or of any such aggression or disturbance or financial stringency under Articles 352 and 360.

The President is further empowered under Article 356 to make a proclamation of failure of the constitutional machinery in the States when he is satisfied that the Government of State cannot be carried on in accordance with the provisions of the Constitution.

The aforesaid proclamations operate for two months and they shall elapse after two months unless both Houses of Parliament have approved.

**(g) Financial Powers.**—The President is given authority to lay before Parliament at the beginning of every financial year, financial statement showing the estimated receipts and expenditure of the Union for that year. No demand for grant can be made except on the recommendation of the President.

The President has the power to distribute between the Union and the States shares from the Income Tax, and to assign to Assam, Bihar, Orissa and West Bengal grants-in-aid

in lieu of their shares from Jute export duty. The President is also empowered to set up a Finance Commission.

**(h) Miscellaneous Powers.**—There are certain residuary powers vested in the President as the Head of the State, in order to let the machinery of Government set up by the Constitution go on instead of coming to a deadlock for want of specific provisions.

**(i) Rule-making Powers.**—The President has the rule-making powers. He shall make rules as to how orders and instruments made by the Government of India, in the name of the President shall be authenticated and how the business of the Government of India shall be conveniently transacted by the Ministers. He shall in consultation with the Chairman of the Council of States and the Speaker of the House of the People, make rules as to the procedure with respect to joint sittings of and communications between the two Houses. The Parliament shall specify the period at the expiration of which a member's seat in Parliament shall fall vacant, in case he does not resign his seat in the Legislature of a State, in case of a double membership. The President's approval is required for rules made by the Supreme Court for regulating the practice and procedure of that Court. The President shall make regulations determining the number of members of the Union Public Service Commission, their tenure and conditions of service and similar provisions regarding the staff of the Commission. He has the power to make regulations specifying the matters in which it shall not be necessary to consult the Union Public Service Commission in respect of services of the Union. Until Parliament legislates the President shall make rules regulating the recruitment and conditions of service of persons serving the Union.

The President has the power under Article 391 to amend the First and Fourth Schedules of the Constitution if any contingency arises.

**Election of the President. Articles 54, 55, 58 and 59 and 71.**

The President shall be elected by the members of an Electoral College consisting of (a) the elected members of both



Houses of Parliament and (b) the elected members of the Legislative Assemblies of the States (Article 54).

His election shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot. Article 55 prescribes that there shall be uniformity in the scale of representation of the different States at the election of the President, and for the purpose of securing such uniformity among the States *inter se* as well as *parity* between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner :—

- (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly ;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one ;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

Direct election of the President on the adult suffrage was discarded for the following reasons given by Pandit Jawaharlal Nehru in the Constituent Assembly<sup>1</sup> :—

- “(i) The framers of the Constitution wanted to emphasise that real power vests in the Ministry and the Legislature and not in the President. If there was a

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1. Constituent Assembly Debates Vol. IV, No. 6, page 374.



President elected on adult franchise and the real power was given to him, it might become a little anomalous.

- (ii) A tremendous loss of time, energy and money would be involved in a Presidential election on adult suffrage. There will be elections to the Parliament on the basis of adult suffrage, and enormous Presidential election added to this would be a tremendous affair, some of which may not be possible to carry out.
- (iii) It would be impossible to provide for electoral machinery for an election in which at least 185 millions of people would have to participate."

The Members of the State Assemblies were included in the Electoral College, because it was feared that the Union Legislature may be dominated by the party forming the Ministry and in that case the President and the ministry would represent the same thing.

All doubts and disputes arising out of or in connection with the election of a President shall be inquired into and decided by the Supreme Court whose decision shall be final. (Article 71).

**Term of office.**—The President shall hold office for five years. He may, by writing under his hand addressed to the Vice-President, resign his office. He may be removed from office by impeachment in the manner provided in Article 61, for violation of the Constitution. (Article 56).

**Re-election.**—The President shall be eligible for re-election. (Article 57).

**Qualifications for election.**—A person shall be eligible for election as President if he is a citizen of India, (b) has completed the age of thirty-five years and (c) is qualified for election as a member of the House of the People.

Further such person should not hold an office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments. But if a person is the President or Vice-President of the Union, or the Governor

of any State or is a Minister either for the Union or for any State he shall be deemed not to hold any office of profit. (Article 58).

**Conditions of Office.**—The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if he is one then he shall be deemed to have vacated his seat on election as President. He shall not hold any other office of profit.

The President shall be entitled to the use of official residence without payment of rent, and to such emoluments and allowances as the Parliament determines by laws and so long as Parliament does not determine, those provided by the Second Schedule. The emoluments and allowances of the President shall not be diminished during his term of office. (Article 59.)

**Oath.**—The President, before entering upon his office, shall make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, an oath or affirmation in the following form,  
swear in, the name of God

“I, A. B. do—————  
solemnly affirm

that I will faithfully execute the office of President (or discharge the functions of the President of India) and will to the best of my ability preserve, protect, and defend the Constitution and the law and that I will devote myself to the service and well-being of the People of India.” (Article 60).

**Procedure for impeachment of the President.**—The President can be impeached for violation of the Constitution only and in the following manner :

(1) The charge shall be preferred by either House of Parliament by a resolution, moved after fourteen days' notice, in writing, signed by not less than one-fourth of the total number of members of the House, and passed by a majority of not less than two-thirds of the total membership of the House. (Article 61(2)).

2) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge and the President shall have the right to appear and to be represented at such investigation. (Article 61(3)).

The conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61. (Article 361(1)).

(3) If after investigation, a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed. (Article 61 (4)).

**Article 62. Vacancy during term of office.**—An election to fill a vacancy in the office of the President before the end of his office shall be held as soon as possible after, and in no case later than six months from the date of occurrence of the vacancy, and the person elected to fill the vacancy should be entitled to hold office for the full term of five years from the date on which he enters office.

**Article 361. President's Privileges.**—The President shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done by him in the exercise and performance of those powers and duties except in case of impeachment under Article 61.

No criminal proceedings whatsoever shall be instituted or continued against the President in any court during his term of office.

No process for the arrest or imprisonment of the President shall issue from any court during his term of office.

No civil proceedings in which relief is claimed against the President shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered

upon his office as President until the expiration of two months next after notice in writing has been delivered to the President (or left at his office) stating (i) the nature of the proceedings, (ii) the cause of action therefor, (iii) the name, description and place of residence of the party by whom such proceedings are to be instituted and (iv) the relief which he claims.

## II—The Vice-President of India.

There shall be a Vice-President of India (Article 63), and he shall be *ex-officio* Chairman of the Council of States. He shall not hold any other office of profit. He will act as President in the event of a vacancy in the office of the President by death, resignation or removal and in the absence or illness of the President, (Article 65). When he acts as President he shall not perform the duties of the office of Chairman of the Council of States. (Article 64).

Before entering upon his office he shall make and subscribe before the President an oath or affirmation according to Article 69.

**Election.**—He shall be elected by members of both Houses of Parliament at a joint meeting under the system of proportional representation by means of the single transferable vote. He shall not be a member of either House of Parliament or of a House of the Legislature of any State and if he one, he shall be deemed to have vacated his seat on the date of his assumption of office of Vice-President. (Article 66).

Doubts and disputes in connection with the election of Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final [Article 71 (1)].

**Article 67. Term of office.**—The term of office of the Vice-President shall be five years unless he resigns or dies or removed from office. The election for the next Vice-President shall be completed before the expiry of the term of office of the first Vice-President. Vice-President shall hold office until the appointment of his successor even though his term of office has expired.

He may, by writing under his hand addressed to the President, resign his office.

He may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People. But no such resolution shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

**Qualification.**—No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the Council of States.

But a person holding office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments shall not be eligible for election as Vice-President, [Article 66 (3)]. However, a person shall not be deemed to hold any office of profit by reason only that he is the President or the Vice-President of the Union or the Governor of any State or is a Minister of the Union or any State [Article 66 (4)].

### **III—The Council of Ministers [Articles 74, 75 and 78.]**

There is a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The Prime Minister is appointed by the President and the other Ministers are to be appointed by the President on the advice of the Prime Minister.

They hold office during the pleasure of the President.

The Council of Ministers is collectively responsible to the House of the People.

The function of the Council of Ministers is, according to the Constitution, only 'to aid and to advise' the President in the exercise of his functions. There is nothing in the Constitution which requires that the President has to follow that advice and to act in accordance with it; on the other hand he is left free to act according to his own wish and to disregard the advice of

his Ministers and Prime Minister. This shows that the President of India is not a mere figure-head and he has real powers which he can exercise in his own discretion. However, in actual practice it may not be possible to act contrary to the wishes of his Ministers, because the latter are responsible to the Parliament and according to the well-established conventions they are appointed from the party in the Parliament which commands majority therein. Disregarding their advice would mean conflict with the Parliament which has also the power to impeach the President. Hence, in ordinary and normal times, the President is bound to act in accordance with the advice of his Ministry. But in extraordinary situations the President may not follow the advice of his Ministers if it is in best interests of the nation. Constitutionally the President of India is, by no means, a mere figure-head, but, unlike the British King, has real power. Dr. Rajendra Prasad, the first President of the Indian Republic and who was also the President of the Indian Constituent Assembly, made the following observations regarding the position of the President :

“Although there is no specific provision in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the Convention under which in England the King always acted on the advice of his Ministers, would be established in this country also and President would become a Constitutional President in all matters.”

In India the Constitution has provided a Cabinet system of Parliamentary Government. The Cabinet or the Council of Ministers is responsible to the Parliament. It can remain in office only so long as it retains the confidence of the Parliament and on its confidence *i. e.*, majority in the Parliament, it has to resign according to the well-known Conventions of the Parliamentary system indirectly recognised by our Constitution also. The Ministers are collectively responsible to the House of the People ; thus even if the acts of a single Minister are not approved by a majority in the House of the People, the whole Cabinet has to suffer and resign. All matters of policy are determined by the entire Cabinet and not by any particular Minister.

In the words of Jennings in his book ‘Cabinet Government’ the essential function of the Cabinet is to co-ordinate and guide



the political action of the different branches of the Government and thereby to create a consistent policy ; it is a buckle that fastens the executive and the legislative branches together and makes them inter-dependent. It not only directs the general policy of the Government but also guides the Legislature and in practice it is the deliberations and policies planned by it that are put through the Legislature and assume the voice of the Legislature in the shape of acts after further and wider deliberations therein.

The Cabinet also initiates and conducts Public Bills and presents the budget and money Bills in the Parliament.

Technically the Ministers depend for their tenure of office on the President's pleasure, but practically on the goodwill of the House of the People. Yet, in modern Parliamentary form of Governments, the Cabinet has unquestionably come to assume a more or less dictatorial character, because of the strengthening of the party organisation within the Parliament which controls the party members through its 'whips', the power of the Cabinet to secure dissolution of the House of the People, and the command over the time and programme of the House of the People and the initiation of important legislation of public nature. Hence Lowell's remarks that the Cabinet legislates with the advice and consent of Parliament are fully justified.

The Prime Minister is the keystone of the Cabinet arch, and the leader of the whole Cabinet. In theory he is equal to the other Ministers but in practice he is the Supreme Head ; other Ministers are appointed on his advice and if they differ from him, they have to resign according to the Conventions now well established in this country. He selects Ministers and assigns to them their portfolios. The resignation of the Prime Minister dissolves the entire Cabinet. He exercises a general supervision over all the Departments. He is the leader of the House of the People and also the leader of the party in majority in the Parliament. Communications to the President are made only through the Prime Minister. He can advise the President for the dissolution of Parliament, and he has the power of patronage, granting honours etc. Thus the powers of the Prime Minister are far superior to those of the other Ministers.



In the matter of the Council of Ministers with a Prime Minister at their head and collective responsibility of Ministers to the House of the People our Constitution follows the principles of responsible Government in England. Although all the principles are not contained in writing in details, much had been left to be developed by Conventions, and now healthy Conventions on the same lines have been already established in this country during the last five years.

Even under the British North America Act, there was no provision by which the Governor-General was only a final and Constitutional Head of the Executive. But by Convention he has been transformed into a Constitutional Ruler like the British Crown. Similarly in India also, without restrictions and limitations on the powers of President, now a healthy Convention is well established that he is only a formal head of the State. But in times of crisis his powers may be real and he may have to act as a truly Executive Head and carry on the administration. In the interval between the resignation of one ministry and the formation of another one, the administration rests entirely in his hands, unless he avoids this contingency by asking the outgoing Ministers to continue until another Cabinet is formed. Secondly, in case there is no clear majority for any person to be elected as the leader of a majority party and there is a conflict between several persons, the President may select some one out of such persons to form the Government and act as Prime Minister and thus he may act for six months during which period the President may not call the Parliament [Article 85(1)]. Similar case may arise where there is no single majority party in the Parliament. Further the President may not act on the advice of the Prime Minister to dissolve the Parliament, thus force the Prime Minister to resign. Here the President may exercise his discretion whether dissolution is for the benefit of the country or the Prime Minister desires it only so that he may try to get a majority for himself at the next election.

**No court to enquire.**—The relation between the President and his Ministers is confidential and no court can enquire into the question of advice tendered by the Ministers to the President.

**Oath of Office.**—Before entering upon his office a Minister shall take the oaths of office and secrecy, administered by the President.

**Qualification.**—A Minister must be a member of either House of Parliament and if he is not on the date of appointment, he should get himself so elected within six months, otherwise at the expiration of six months he shall cease to be a Minister.

**Communication to Parliament.**—Article 78 requires that the Prime Minister shall communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation. He shall furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for. If the President requires, the Prime Minister shall submit for consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

#### IV—The Attorney General for India (Art. 76).

Under the Constitution there is to be an Attorney General for India whose duty shall be to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. He holds office during the pleasure of the President and receives such remuneration as the President has determined. In the performance of his duties he has the right of audience in all courts in India.

The qualification for appointment is that he should be a person who is qualified to be appointed a Judge of the Supreme Court of India. He is to be appointed by the President and now, according to the Conventions, on the advice of the Council of Ministers.

In India the appointment is not purely political as in England, and the Attorney General, according to rule framed under the Constitution, is more or less a legal adviser to the Government and he need not change with the change of the Cabinet as in England.

## CHAPTER II

### Parliament

**The Constitution of Parliament.**—The Parliament of the Union consists of the President of India and two Houses, known as the Council of States and the House of the People. (Article 79).

**Council of States**—The Council of States consists of :  
(a) twelve members, nominated by the President, consisting of persons having knowledge or practical experience in Literature, Science, Art and Social Service ;

(b) Not more than 238 representatives of the States [and of the Union territories]<sup>1</sup> divided in accordance with the provisions in the Fourth Schedule ; representatives from the States are to be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of a single transferable vote ; representatives from Union territories are to be chosen in the manner prescribed by law by the Parliament. (Article 80).

The Council of States is not subject to dissolution but one-third of its members are to retire on the expiration of every second year [Article 83 (1)]—Thus inclusion of fresh talents is assured and at the same time older people are also retained to give mature judgments and advice.

The qualification for being a member of the Council of States is that a person must be (a) a citizen of India, (b) not less than thirty years of age, and (c) in possession of such other qualification as the Parliament may prescribe. (Article 84).

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1. Added by the Constitution (7th Amendment) Act, 1956, Section 3.

The Vice-President of India is the Chairman of the Council of States. The Council is to choose its Deputy Chairman (Article 89). The Deputy Chairman performs the functions and duties of the Chairman in his absence (Article 91). He may resign his office; he may, after the 14 days' notice, be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council. (Article 90).

**The House of the People.**—The House of the People consists of not more than five hundred members directly elected by the People through territorial Constituencies in the States on the basis of adult suffrage. Every citizen who is twenty-one years of age and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice is entitled to be a voter. The proportion of representation of each State is fixed according to the population. For the first ten years seats for the Scheduled Castes and the Scheduled Tribes are to be reserved (Articles 330 and 334) and the President can nominate, two members of the Anglo-Indian Community. There will be not more than 20 members to represent the Union Territories, chosen according to law made by Parliament.

- ✓ The life of the Parliament is five years unless it is dissolved earlier. In case a proclamation of emergency is in operation, its life may be extended by the Parliament for one year. [Article 83 (2)].

The qualification for being elected to the House of the People is that a person (a) shall be a citizen of India, (b) shall be twenty-five years of age and (c) shall possess such other qualifications as are prescribed by Parliament. (Article 84).

For the House of the People there shall be a Speaker and a Deputy Speaker, both chosen by the House from its members. They can resign their office, and may be removed by a resolution of the House, moved after fourteen days' notice, passed by a majority of all the then members of the House. In the absence of the Speaker his duties are to be performed by the Deputy Speaker (Articles 93-96). The Speaker has no vote except in the case of a tie (Article 100). His salary and allowances are charged on the Consolidated Fund of India (Article 112). His position is made impartial and independent.

Every member, before taking his seat in either House, is to make and subscribe an oath or affirmation. (Article 99).

**Articles 101 and 102. Qualification for membership.—**

A person is disqualified for being chosen as and for being a member of either House of Parliament :—

- (a) If he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder, or the office of a Minister either for the Union or for the State.
- (b) If he is of unsound mind and stands so declared by a competent court.
- (c) If he is an undischarged insolvent.
- (d) If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State.
- (e) If he is so disqualified by or under any law made by Parliament.

No person can be a member of both Houses of Parliament or a House of the Parliament as well as a Legislature in Part A or Part B States. (Article 101).

If a member of either House absents for a period of sixty days from all meetings without permission of the House, the House may declare his seat vacant and he shall cease to be a member. (Article 101).

The question of disqualification of a member is to be decided by the President according to the opinion of the Election Commission of India. (Article 103).

If a person sits or votes as a member of either House of Parliament before making and subscribing oath or affirmation or when he knows that he is not qualified or that he is disqualified or that he is prohibited from so doing by any law, he is liable to a penalty of five hundred rupees in respect of each day on which he so sits or votes. (Article 104).

**Powers and Privileges.**—The members of Parliament enjoy freedom from any proceeding in any court in respect of anything said or any vote given in Parliament or any of its committees; no person is so liable in respect of the publication by (or under the authority of) either House of Parliament of any report, paper, votes or proceedings. (Article 105).

Members of Parliament are entitled to receive such salaries and allowances as may be determined by the Parliament by law. (Article 106).

## 2. The Conduct of Parliament's business

**Summoning, Prorogation and dissolution.**—After the election of the members, the Parliamentary business commences with the summoning of the two Houses or either House of Parliament by the President to meet at such time and place as he thinks fit. The President may prorogue or dissolve the Houses, but within six months he has to re-summon them. (Article 85).

**President's Address.**—The work of Parliament begins with the address of the President to either House or both Houses in a joint sitting. The President may also send messages to either House of Parliament whether in respect of a pending Bill or otherwise. (Article 86).

After each general election to the House of the People at the commencement of the first session, and at the commencement of the first session of each year, the President shall address both Houses of Parliament at a joint sitting. (Article 87).

All questions, at any sitting of either House or in joint sitting, are to be determined by a majority of votes of the members present and voting. The Chairman or Speaker has only a casting vote. (Article 100).

**Quorum.**—The quorum to constitute a meeting of either House of Parliament is one-tenth of the total membership of that House. (Article 100). But if a business is transacted without quorum, its validity cannot be challenged on this ground later on. (Article 122).

**Articles 118 and 119. Rules of procedure.**—Each House of Parliament is authorised to make rules for regulating, subject



to the provision of the Constitution, its procedure and conduct of its business. The President after consulting the Chairman of the Council of States and the Speaker of the House of People can make rules as to the procedure with respect to joint sittings of and communications between the two Houses. The Parliament can regulate procedure of both Houses in relation to financial matters in order to complete it within time and avoid unnecessary delay.

### 3. Legislative procedure

The Constitution has provided two types of procedure ; a general one for all the Bills other than Money and Financial Bills, and the other one for the Money and Financial Bills for which a special procedure is prescribed.

**Articles 107 to 111. General Procedure.**—A Bill may originate in either House of Parliament ; both the Houses have equal powers in regard to legislation except that Financial Bills cannot be introduced in the Council of States. A Bill must be passed by both Houses. When a Bill is passed by one House, then it is sent to the other House. If the other House agrees to the Bill without amendment, it will be deemed to have been passed by both Houses of Parliament and thereafter it is presented to the President for his assent under Article 111. If the other House passes the Bill with amendments, then it is returned to the House which originated the Bill for reconsideration. If this House accepts the amendment, the Bill is to be presented to the President for his assent. If the originating House does not agree to all the amendments and no final agreement between the two Houses is reached by means of negotiations, the provisions under Article 108 are applied by the President and a joint sitting of the two Houses is held. At the first sitting decision is taken by a majority of the members present and voting at a joint sitting ; the House of People may gain a predominance owing to its numerical strength. Thus ultimately its voice prevails unless it had passed the Bill by a narrow majority. This Procedure works as a check on the powers of the House of People and affords opportunity for a healthy consideration of all the matters in a cool atmosphere.



In case a House rejects the Bill passed by the other House altogether, the President may apply the provisions of Article 180 and call for a joint sitting of the two Houses at which the matter shall be decided as stated above.

Where a Bill has been passed by one House, the other House may not take any action on the Bill and may keep it lying on its table without returning it to the originating House. In such a case, if six months have elapsed since the date of the reception of the Bill, the President may summon the joint sitting of both the Houses under Article 180 to decide the matter in the aforesaid manner.

At the joint sitting of the two Houses, convened by the President the Speaker of the House of the People presides; (Article 118). At the joint sitting no amendments are allowed if the Bill was not passed by the other House with amendments. If the Bill was passed by the other House with amendments and returned to the originating House, only such amendments shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; the decisions of the President of the joint sitting shall be final as to which amendments are to be allowed. This procedure is prescribed in order to limit the amendments which might unnecessarily prolong the proceedings and delay the passing of the Bill.

The prorogation of the Houses does not lead to the lapsing of Bills pending in Parliament. Even a Bill which was introduced in the Council of States and is pending there does not lapse on account of the dissolution of the House of the People. But on a dissolution of the House of the People, a Bill which was pending in the House of the People, or which, having been passed by the House of the People is pending in the Council of States, shall lapse altogether. But a Bill does not lapse if the President has prior to the dissolution of the House of the People, notified his intention to summon joint sitting of the two Houses to consider that Bill. Similarly, a Bill which has been passed by both Houses and is awaiting the President's assent at the time of the dissolution of the House of the People does not lapse by virtue of its dissolution.

The procedure under our Constitution about the lapsing of Bills is different from that in England where the effect of the dissolution of the Parliament and even of prorogation is that all pending Bills lapse. This rule is relaxed in India.

**President's assent.**—The last link in the process of the making of laws is the President. No Bill can become Law unless the President has given his assent to it after it has been passed or deemed to have been passed either by both the Houses or at a joint sitting of the two Houses. The Powers of the President are wide; he may give assent to the Bill, or he may withhold his assent, or he may in the case of Bills other than Money Bills, return the Bill for reconsideration of the Houses, with or without a message suggesting amendments. On such return, the Houses are to reconsider the Bill accordingly and if the Bill is passed by both the Houses with or without amendments and presented to the President for assent, the President shall give his assent and he cannot withhold it. The President may further neither assent to, nor refuse assent to Bill, nor return the Bill, but he may indefinitely postpone the Bill and in this way he can be able to exercise a pocket vote. Thus the President has got limited power of veto against the legislative supremacy of the two Houses; he can delay legislation and require the two Houses to reconsider the entire matter after the heat of the moment has subsided by the lapse of time. This qualified veto is only an appeal to the Legislature itself by the highest personality of the country. On the other hand, the President has also got absolute power in this respect that he can refuse to give assent altogether, and then even the Bill passed by both Houses cannot become the Law. Thus the President's legislative powers are real and substantial.

The date of the passing of an Act is the day on which the assent of the President is given to a Bill.

**Money Bills. Articles 109-110.**—The Constitution has made special provisions in respect of Money Bills on account of their importance to the nation. It was this power in the hands of the British Parliament before the Revolution of 1688 that made it successful in crushing the despotic powers of the Stuart Kings of Great Britain. Therefore, in every modern Constitution special provisions are made so that Bills relating to

money matters may be passed expeditiously and no other authority, except the House of Parliament shall have the final word in this respect. Every Parliament has been over-jealous in safeguarding this power for itself as it is how its supremacy can be maintained in reality. The Bills dealing with the following matters are described to be Money Bills under Article 110 of the Constitution:—

- (1) The imposition, abolition, remission, alteration or regulation of any tax.
- (2) The regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India.
- (3) The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund.
- (4) The appropriation of moneys out of the Consolidated Fund of India.
- (5) The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure.
- (6) The receipt of money on account of the Consolidated Fund of India or the Public Account of India or the custody or issue of such money or the audit of the accounts of the Union or of the State.

The Article further provides that a Bill shall not be deemed to be a Money Bill only because it provides (a) for the imposition of fines or other pecuniary penalties, or (b) for the demand or payment of fees for licences or fees for services rendered, or (c) for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

The Speaker is to give a decision as to whether a Bill is a Money Bill or not and his decision shall be final. When a Money Bill is transmitted to the Council of States, and when it is presented to the President for assent, the Speaker of the House of the People shall endorse on it that it is a Money Bill.

The following is the special procedure laid down for Money Bills :—

- (1) A Money Bill is to be introduced in the House of the People only and never in the Council of States.
- (2) After the House of the People has passed a Money Bill, it is to be transmitted to the Council of States for its recommendations and the Council of States shall within fourteen days from the date of the receipt of the Bill, return it to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States. If it is not so returned, it shall be deemed to have been passed by both the Houses at the expiry of the said period in the form in which it was passed by the House of the People.
- (3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People. But if the House of the People does not accept any of the recommendations of the Council of States, the Money Bills shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any amendments recommended by the Council of States.

**Financial Matters. Articles 112-117.**—The Annual Financial statement, popularly known as the Budget for the coming year is to be presented to both the Houses of Parliament ; it is usually done by the Finance Minister and it is the responsibility of the President of India to cause it to be laid before the Houses. The Budget is the statement of the estimated receipt and expenditure of the Government of India for the year. The presentation of the Budget is followed by a general discussion of the statement as a whole in either House.

The Council of States has no further say in the matter beyond the general discussion ; it cannot vote on demands.

The House of the People alone has the right to vote on the demands in the Budget for expenditure ; it has the exclusive right of granting supplies. After the general discussion is over, the estimates are submitted to the House of the People in the form of demands for grants on the particular heads, followed by a vote in that House. The House of the People may assent to the demand, or refuse it or reduce it, but it has no power to increase it, or to alter the designation of a grant or to put any condition as the appropriation of the grant. The grants as voted by the House of the People are embodied in a Money Bill and passed by the Parliament to become an Act, known as the Appropriation Act. It is the sole legal authority for the appropriation of money from the Consolidated Fund of India. In the same way, the new taxing proposals in the Budget to raise money are embodied in another Bill, known as the Finance Bill which is passed by the Parliament as the Annual Finance Act.

The expenditure side of the Budget shows separately the sums required to meet (i) the expenditure charged upon the Consolidated Fund of India, and (ii) other expenditure proposed to be made from the Consolidated Fund of India. The following expenditure can be charged on the Consolidated Fund of India under Article 112 (3) :—

(1) The emoluments, allowances, salaries, pensions, etc., payable to (i) President, (ii) the Chairman and Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People, (iii) Judges of the Supreme Court and High Courts and (iv) the Comptroller and Auditor-General of India.

(2) Debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt.

(3) Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ; and

(4) Any other expenditure declared by this Constitution or by Parliament to be so charged.



The aforesaid items of the expenditure charged upon the Consolidated Fund of India are not to be submitted to the vote of the Parliament under Article 113 (1); only discussion of expenditure charged on the Consolidated Fund is allowed so that either House can criticise the conduct or administration of the services which are charged. Article 117 (3) further provides that a Bill involving expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill; thus the Constitution makes the Executive solely responsible for the expenditure of the public money.

Estimates relating to other expenditure proposed to be made from the Consolidated Fund of India are to be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

**Appropriation Bill.**—There are special provisions in Articles 114 and 115 of the Constitution of India in respect of Appropriation Bills. An Appropriation Bill is one which provides for the appropriation out of the Consolidated Fund of India of all moneys required to meet the grants made by the House of the People; and the expenditure charged on the Consolidated Fund of India but not exceeding the amount shown in the statement previously laid before Parliament.

There are certain special procedures relating to the Appropriation Bill. Firstly, no amendment can be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made. Secondly, the decision of the person presiding at the meeting as to whether an amendment is inadmissible in respect of an Appropriation Bill is final. Thirdly, no money can be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with Article 114. Fourthly, if the amount authorised under Article 114 proves insufficient for the year or when a need arises during the current financial year for supplementary or additional expenditure upon some new service not provided for in the

annual financial statement for that year, or if any money has been spent on any service during a financial year in excess of the amount granted for that service in that year, the President of India may cause to be placed before the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess under Article 115. Provisions set forth in Articles 112, 113 and 114 apply to any such statement of expenditure or demand.

The President has power under Article 116 to place before Parliament demands for additional or supplementary or excess grants ; the procedure prescribed in respect of the normal annual demands for grants applies in these cases also.

**Votes on account.**—The House of the People has special powers to make advance grants or exceptional grants ; the normal procedure applies to them also. Advance grant is made by the House of the People for enabling the Government departments to carry on until the passing of the Annual Financial Statement is complete ; it is technically known as the votes on account, and it can be done on any day subsequent to the presentation of the Budget.

**Vote of Credit.**—The House of the People has also power to make a grant for meeting an unexpected demand upon the resources of India in cases where on account of the indefinite character of the service it is not possible to give details. Such a grant is known as vote of credit ; it is required in times of national emergency. Vote of credit is passed in the same way as annual grants.

The House of the People can further make an exceptional grant which does not form any part of the current service of any financial year, and Parliament can authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

#### 4. Other Matters

**Language in Parliament. Article 120.**—The business of the Parliament is to be conducted in Hindi or in English, but the Presiding Officer of the House can permit any member who



cannot adequately express himself in Hindi or in English to address the Houses in his mother tongue. After fifteen years from the date of commencement of the Constitution, English shall not be the language to be used in Parliament.

**Restriction on discussion**—Parliament cannot discuss the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President for the removal of the Judge according to the provisions in this Constitution.

**Courts not to enquire into proceedings of Parliament.**—The validity of any proceeding in Parliament cannot be enquired into by any court on the ground of any alleged irregularity of procedure. The conduct of any officer or member of Parliament, regulating the procedure or the conduct of business or maintaining order in Parliament is not subject to the jurisdiction of any court.

### CHAPTER III.

**Legislative Powers of the President (Ordinances during recess of Parliament. Article 123.**—The President is given the power to legislate by Ordinance in order to meet any circumstance that may require immediate action, when Parliament is not in session. The President exercises this power on the advice of his Council of Ministers, and when the Parliament is in session, the President cannot exercise this power. The Legislative Power of the President for making ordinance is co-extensive with the power of the Parliament itself, he can enact by Ordinances what Parliament might have enacted and he cannot enact what Parliament could not; thus he can repeal or amend any Act of the Parliament and can make an ordinance with retrospective effect. But an ordinance violating the Fundamental Rights cannot be made.

The duration of the Ordinance depends upon the re-assembly of Parliament. If on reassembly, Parliament disapproves of the Ordinance, it would cease to have effect immediately; otherwise it shall continue in force for another six weeks from the date of re-assembly of Parliament where both Houses assemble together or a reassembly of that House which assembles later.

## CHAPTER IV

## THE UNION JUDICIARY

**General.**—The Union Judiciary as well as the State Judiciary are completely independent of the Executive and thus are the corner stone of civil liberties. The proper functioning of democracy in India depends on the rule of law being the basis of our Constitution and this in truth depends upon the position accorded to the Supreme Court, and the High Courts in the constitutional structure and their relationship with other organs of the Government.

The Supreme Court of India<sup>\*</sup> has four different capacities with different powers, (i) as a Federal Court, (ii) as a Guardian of the Constitution, (iii) as an Appellate Court, and (iv) as the Advisory Body.

**As a Federal Court.**—The Indian Constitution is Federal in character and therefore a Federal Court is an essential element in our Constitution. This function is assigned to the Supreme Court of India. As a Federal Court it is the interpreter and guardian of the Constitution and a tribunal for the determination of the disputes between the Constituent Units of the Federation. In a Federal Constitution the legislative as well as the executive powers are distributed between the Union and the component units, the States or Provinces; the powers and functions of both are limited by the Constitution. This division of the powers raises disputes between the Union and the States and between the States *inter se* which require the existence of a judicial body to determine and decide them; it is the function of the Federal Court to maintain the distribution of the powers as given by the Constitution; it also decides disputes between States themselves arising from the Constitution. The importance of a Federal Court is laid down by the Supreme Court of America in the following words :

“This court has no more important function than that which devolves upon it, the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, Federal and State, to the end that each may

continue to discharge harmoniously with the other, the duties entrusted to it by the Constitution.”<sup>1</sup>

Thus Article 131 of our Constitution has vested in the Supreme Court original and exclusive jurisdiction to determine justiciable disputes between the Union and the States or between the States *inter se*. But our Constitution does not provide that Supreme Court shall have original jurisdiction to decide disputes between residents of different States or between a State and a resident of another State. Such disputes are to be instituted in the ordinary course, and from there they may reach the Supreme Court in appeal according to the provisions laid down in the Constitution for ordinary suits. In this respect our Constitution differs from the Constitutions of the United States of America and Australia in both of which are given original jurisdiction to their Supreme Courts in such matters also. *Sir Alladi Krishnaswamy Aiyar* has emphasised the essential functions of the Supreme Court as a Federal Court in the following memorial words<sup>2</sup> :—

“The future evolution of the Constitution will to a large extent depend upon the work of the Supreme Court and the direction given to it by the court. As Professor Frankfurter, now Mr. Justice Frankfurter of the Supreme Court of the United States of America puts it in one of his addresses ; ‘Federalism is not a form of Government with unvaryings content ; Federal Governments are not the off springs of political science but the products of social and economic forces.’

The interplay of forces within Federalism is largely moulded by judicial interpretaion. The courts have in a Federation, the arduous task of defining the orbits of Government to prevent collision. Referring to the Constitution of the United States of America Professor Frankfurter says ; ‘It is not a printed finality but a dynamic process. Its application to the actualities of Government is not a mechanical exercise but a high function of State craft.

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1. *Hammer vs. Dugan*, (1918) 247 U. S. 251.

2. Address by Sir A. K. Aiyar, A. I. R. (1949) Journal 35.

"From time to time, in the interpretation of the Constitution, the Supreme Court will be confronted with apparently contradictory forces at work in the society for the time being. While its function may be one of interpreting the Constitution as contained in the instrument of Government, it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the times which furnish the necessary background. It has to keep the poise between the seemingly contradictory forces. In the process of the interpretation of the Constitution, on certain occasions it may appear to strengthen the Union at the expense of the Units and at another time it may appear to champion the cause of provincial autonomy and regionalism. On one occasion it may appear to favour individual liberty as against social or State control and at another time it may appear to favour social or State control. It is the great judicial tribunal which has to draw the line between individual liberty and social control.....

In the maintenance of the rule of law, the present age is confronted with yet another serious problem. With the expansion of the sphere of the Governmental activity, inevitable under modern conditions in spite of the strong criticism of the late Lord Chief Justice of England, the institution of Administrative Tribunals and Agencies invested with judicial or *quasi-judicial* functions will continue to be a feature of modern Government and has almost become unavoidable. The only safeguard against the abuse of the power vested in such tribunals and bodies is in the ultimate or revisory jurisdiction vested in the Higher Courts of the realm and in the Supreme Court. The revisional jurisdiction vested in the Supreme Court and the prerogative writs guaranteed under the Constitution to a certain extent achieve this purpose.

**As guardian of the Constitution**—The Supreme Court of India is vested with the most solemn function to be the guardian of the Constitution and it is within its sphere to judge whether a law made by the Legislature of the Union or any State conforms to the provisions of the Constitution or it violates any

provision in the Constitution. The Supreme Court is to watch that the Legislatures work within their defined limits and do not transgress those limits. The Constitution, being federal in character with defined and limited powers of the Union and State Legislatures and Executives, this responsibility of the Supreme Court is very heavy and it has to sit upon the constitutionality of laws passed by the Legislatures. The Indian Constitution is founded on the theory of "Supremacy of the Constitution" as a fundamental law by which the powers of the Legislatures are limited ; therefore, the Court has become the guardian and protector of the Constitution and the Judiciary has the undisputed power to interpret and administer the law. This was made possible because the Constitution is an organic and Supreme Law over the Legislature. This radical doctrine of the Supremacy of the Constitution and the court acting as its guardian has led to the establishment of the theory of Judicial Supremacy in the Constitution of the United States of America.

In this respect the English Constitution has fundamental difference inasmuch as it has provided for the Parliamentary supremacy ; if a law is once on the statute book it is binding on all courts and it cannot be declared unconstitutional by the judiciary of the land. There is nothing like unconstitutional Law in England. The English Constitution has assigned no limits to the authority of Parliament over all matters and persons within its jurisdiction. Howsoever unjust a law may be, Parliament is not controlled by any outside agency in its discretion and when it errs, its errors cannot be corrected by any other body but they may be corrected by itself. On the other hand, there are many Constitutions which have declared that the Constitution shall be "the Supreme Law of the land." Such declarations are to be found in Article VI (2) of the Constitution of the United States of America, Article 8 of the Japanese Constitution, Article 13 of the Weimer Constitution of Germany. The Constitution of Eire has also declared in Article 34 that "the jurisdiction (original) of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution." In *National Union vs. Sullivan*,<sup>1</sup> the Irish Supreme Court lays down :

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1. (1947) Irish Reports 77 (99-100).



"Constitutions frequently embody, within their framework important principles of policy expressed in general language. To some Constitutions it is left to the Legislature to interpret the meaning of these principles, but in other types of Constitutions, of which ours is one, an authority is chosen which is clothed with the power and burdened with the duty of seeing that the Legislature shall not transgress the limits set upon its powers.....If it be established in any case that the Legislature has exceeded its powers it is the duty of this court to so declare."

About the powers of Judiciary under the Constitution of the United States of America, Hamilton wrote<sup>1</sup> :—

"The interpretation of the laws is the proper and peculiar province of the courts—the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents, *i. e.*, the Legislature.

A limited Constitution...one which contains certain specified exceptions to the legislative authority ; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void.

Without this, all the preservation of particular rights or privileges would amount to nothing."

In *Marbury vs. Madison*<sup>2</sup> Chief Justice Marshall of the Court of the United States observes as follows :—

"The powers of the Legislature are defined and limited ; and that those limits may not be mistaken or forgotten the Constitution is written.....The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the

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1. Hamilton, Federalist p. 39.

2. (1803) 1 Cr. 137.

Legislature shall please to alter it ;...if the latter part be true, then the written Constitutions, are absurd attempts on the part of the people to limit a power, in its own nature illimitable... .

It is emphatically the province and duty of the judicial department to say what the law is.... If these courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature the Constitution and not such ordinary act must govern the case to which they both apply."

The doctrine of Judicial Supremacy has been described by Willoughby as follows :—

"The fundamental principle of American Constitutional jurisprudence is that laws and not men shall govern." It is this doctrine of the judicial supremacy that has made the Supreme Court of the United States of America the Balance wheel of the Constitution.

The Canadian and Australian Constitutions also have established the supremacy of the Constitution, thereby giving the courts power to determine the validity of various enactments of the Central and Provincial Legislatures.

In our Constitution there is no express provision which declares the Constitution to be the Supreme Law of the land. But this was not necessary as the Constitution is the only source from which all the State organs derive their powers and Article 368 specifically provides that the Constitution cannot be altered except in the way laid down in the Constitution for amendments ; powers and functions of each State organ are limited and defined and none has unlimited powers. It is from these limitations and restrictions on the powers of various organs that the power of the courts to invalidate laws springs for any transgression of those limitations would make the Laws and Acts void and no court is to apply void laws. Hence there is no express provision in the Constitution empowering the courts to invalidate laws. Article 13 provides that any Law of the Legislature or Act of the Executive which contravenes any Fundamental Right is void ; Articles 251 and 254 declare that



in case of inconsistency between Union and State laws, in certain cases, the State law shall be void. Article 246 (3) grants exclusive powers to the State Legislatures in certain matters and thus the Parliament cannot legislate in these matters. Thus, the powers of the courts to avoid laws made in excess of the legislative powers of the Legislature is inherent in the Constitution on account of the provisions for Government by defined and limited powers. The Supreme Court and the High Courts alone are empowered under Articles 131 to 136 and 228 to pronounce upon the validity of laws and the subordinate courts have no such powers. Within the last few years the Supreme Court and the High Courts have declared numerous laws to be void.

The Supreme Court as well as the High Courts have revisional powers through the judicial writs under Articles 32 and 226 respectively against Executive excesses which have become very common on account of the recent development of Administrative Laws and Administrative Tribunals.

**As an Appellate Court.**—The Supreme Court of India is the final Appellate Tribunal of the land. In this respect it enjoys the position of the House of Lords in England. The Supreme Court has this jurisdiction in civil as well as criminal matters and against orders of all tribunals and courts of the country except military tribunals. This jurisdiction of our Supreme Court is much larger than that of the Supreme Court of the United States of America which is concerned only with cases arising out of federal jurisdiction, or the validity of laws.

**Advisory Function.**—The President of India can consult the Supreme Court on any question of law or fact of public importance or a dispute to which a State specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution and has or has been continued in operation after such commencement.

From the above discussion it is clear that the Supreme Court of India enjoys more powers than any other Supreme Court in any part of the World, having original, appellate, revisional and

consultative powers and functions combined in the same body.

**The constitution of the Court.**—(Articles 124-128, 374 and Schedules 2 and 3).

The Constitution has established a Supreme Court of India consisting of a Chief Justice of India and seven other Judges until the number of Judges is increased by an Act of the Parliament. They hold office until the attainment of the age of sixty-five, but a Judge may, by writing under his hands addressed to the President, resign his office (Article 124).

**Appointment.**—A person shall not be qualified to be appointed as a Judge of the Supreme Court unless he is a citizen of India and (a) has been for at least five years a Judge of a High Court, or (b) has been for at least ten years an Advocate of High Court, or (c) is in the opinion of the President, a distinguished Jurist. Before entering upon his office, he has to make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, given in Schedule 3 :—

“I, A. B. having been appointed Chief Justice (or a Judge) of the Supreme Court of India do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established; that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws” [Article 124(3)].

No person who has held office as a Judge of the Supreme Court shall ever plead or act in any court or before any authority in India [Article 124(7)].

The salary of the Chief Justice is fixed to be Rs. 5,000 and that of the other Judges at Rs. 4,000. They are entitled without payments of rent to the use of an official residence. (Article 125 and Schedule 2).

**Removal.**—A Judge of the Supreme Court can be removed from his office only by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the grounds of fraud, misbehaviour or incapacity. For this purpose procedure may be regulated by the Parliament for the presentation of the address as well as for the investigation and proof of his misbehaviour or incapacity. [Article 124(4) and 124(5)].

The Parliament is to make law with respect to privileges, allowances, leave of absence and pension available to a Judge ; their salaries are fixed in the Second Schedule of the Constitution. The privileges and allowances of a Judge or his rights in respect of leave of absence or pension cannot be revised to his disadvantage after appointment (Article 125), but when a proclamation of emergency is in operation, the President has the power to reduce his salary and allowances (Article 136). This ensures the independence of the Judiciary.

**Ad hoc Judges.**—If at any time, a quorum of the Judges of the Supreme Court is not available to hold or continue any session of the Court, the Chief Justice of India may, (with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned), request, in writing, the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court who thereupon shall attend the sittings of the Supreme Court and shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court. (Article 127).

The Chief Justice of India may, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court to sit and act as a Judge of the Supreme Court. If such a person consents to do so, he shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of a Judge of that court ; (Article 128).

**Independence of Judiciary.**—The aforesaid system of appointment and removal of the judges in which the Executive has no hand guarantees the independence of the Supreme Court. Our Constitution has modified the system of appointment by the Executive as provided in England. There is no political basis in their appointments. Even the Chief Justice of India is not given the sole power of advising the President, because it is always dangerous to leave such high and important function in the hands of a single individual, notwithstanding his eminence as every one is likely to have his own failings and prejudices. Hence the President is to consult the Chief Justice of India, Judges of the Supreme Court and High Court. However, the President is not bound to follow the advice given by them and he may ultimately rely on the advice of the Prime Minister, but he will have the advantage of having the views of those who are competent to speak in the matter. In England and the United States of America there is no age of retirement for the Judges of High Courts, but in our Constitution it is fixed at 65 years. This might make the Judges look up for favours of appointment to other places to the Executive and it may not lead to independence of the Judges which the Constitution really contemplates. It would have been better if there was no retirement and Judges held office during good behaviour. The guarantee of salary, allowances and other privileges, after appointment and during the term of office without any alteration further encourage independence of the Judiciary for they have not to seek favour from the Executive.

**A Court of Record.**—The Supreme Court is a Court of Record and its acts and proceedings are enrolled for a perpetual memorial and testimony. It has the power to punish for contempt of itself (Article 129).

**Seat of the Court.**—The Supreme Court shall sit in Delhi or such other places as the Chief Justice of India may, with the approval of the President, from time to time, appoint (Article 130).

**Jurisdiction of the Supreme Court. (Articles 32, 131 to 139, 142 to 145, 363 and 374).**—The Supreme Court exercises three kinds of jurisdiction (i) Original, (ii) Appellate, and (iii) Advisory or Consultative.

**Original Jurisdiction.**—Article 131 provides that the Supreme Court of India shall have original jurisdiction in any dispute (a) between the Government of India and one or more States or (b) between the Government of India and any State or States on one side and one or more other States on the other (c) between two or more States.

In the aforesaid cases the dispute must involve any question of law or fact on which the existence or extent of a legal right depends. But this original jurisdiction does not cover a dispute to which a Part B State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of the present Constitution and has continued in operation after 26th January, 1950. Similarly, the original jurisdiction cannot be invoked in a dispute to which any State is a party, if the treaty, agreement, covenant, engagement, *sanad* or other similar instrument provides that the Supreme Court's original jurisdiction shall not extend to such a dispute.

However, the President is authorised under Article 143(2) to refer the above mentioned disputes to the Supreme Court for opinion after hearing the parties.

One important exception is made by Article 363 which provides that neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad*, entered into or executed before the commencement of our Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India was a party. Further complaints as to interference with inter-State water supplies, referred to in Article 262, if Parliament so legislates matters referred to the Finance Commission under Article 280, and adjustment of certain expenses as between the Union and the States under Article 290 are excepted from the original jurisdiction of the Supreme Court.

**Writs.**—The second type of the original jurisdiction is conferred on the Supreme Court under Article 32 to issue

directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* for the enforcement of Fundamental Rights.

Further Article 139 empowers the Parliament to make law conferring on the Supreme Court power to issue the aforesaid writs and directions for any purposes other than those mentioned in Article 32 for enforcement of Fundamental Rights.

The original jurisdiction of the Supreme Court is limited to the aforesaid purposes and parties only and it is not a court of ordinary original jurisdiction in all matters and between all parties. Under the United States Constitution, the original jurisdiction of the Supreme Court is limited to (a) cases affecting ambassadors and other public ministers and consuls, and (b) contravention in which a State shall be a party.

**Appellate Jurisdiction.**—The Appellate Jurisdiction of the Supreme Court may be classified into (a) appeals on constitutional questions by certificate or by special leave of the Supreme Court, and (2) ordinary civil and criminal appeals, with the certificate of the High Court or by special leave of the Supreme Court, and (3) appeals by special leave of the Supreme Court in other matters.

Under Article 132 of the Constitution, from any judgment, decree or final order of a High Court in India, in civil, criminal or other proceeding, an appeal lies to the Supreme Court if the High Court certified that the case involves a substantial question of law as to the interpretations of the Constitution or if the Supreme Court grants special leave on being satisfied that the case involves a substantial question of law as to the interpretation of this Constitution.

Under Article 133 of the Constitution, an appeal lies to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in India, if the High Court certifies—

- (a) that the amount or the value of the subject-matter the dispute in the court of the first instance and also in dispute on appeal is twenty thousand rupees ;



- (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value ; or
- (c) that the case is a fit one for appeal to the Supreme Court and as regards clauses (a) and (b) where the judgment, decree or final order appealed from affirms the decision of the court immediately below, the High Court must further certify that the appeal involves some substantial question of law.

However, no appeal shall lie to the Supreme Court from the judgment, decree or final order of one Judge of High Court [Article 133 (3)], unless the Parliament provides for it by law.

An appeal under Article 134 lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in India if the High Court :—

- (a) has, on appeal reversed an order of acquittal of an accused person and sentenced him to death ; or
- (b) has withdrawn for trial before itself, under section 526 Criminal Procedure Code, any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- (c) certifies that the case is a fit one for appeal to the Supreme Court.

Further, under Article 134, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order (other than an order made under any law relating to the Armed Forces) in any cause or matter passed or made by any Court or Tribunal in India.

From the commencement of the Constitution, all suits, appeals and proceedings, civil or criminal, pending in the Federal Court were transferred to the Supreme Court which shall hear and determine them in view of Article 374 (2). Judgments and orders of the Federal Court delivered or made before the commencement of this Constitution are to have the



same force and effect as if they were delivered or made by the Supreme Court itself. From the commencement of the Constitution the jurisdiction of the Privy Council in a State has ceased and all appeals and other proceedings pending before that authority at such commencement were transferred to and disposed of by the Supreme Court under Article 374(4).

**Review Jurisdiction.**—Under Article 137 the Supreme Court is given power to review any judgment pronounced or order made by it, subject to the provisions of any law that the Parliament may make or any rules that are made under Article 145.

**Enlargement of Jurisdiction.**—The Supreme Court may be given such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer. It may further have such jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court (Article 138).

**Binding Force.**—The law declared by the Supreme Court is binding on all courts within the territory of India (Article 141). The Supreme Court may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made is enforceable throughout the territory of India (Article 142). Under Article 144 all authorities, civil and judicial, in the territory of India are to act in aid of the Supreme Court.

**Advisory Jurisdiction.**—The President, as the Executive head of the Union is empowered to refer questions of law or fact for the opinion and report of the Supreme Court, provided such questions are of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it. This is the consultative power of the President under Article 143. The Supreme Court of the United States of America has no such function. For its opinion the Supreme Court may hear the parties, if it thinks necessary. Under our Constitution it is not obligatory on the Supreme Court to give the opinion ; it may refuse it. At the same time such opinion

is not binding on the President ; he may or may not act in accordance with it. The opinion does not preclude the Supreme Court from taking a contrary view in the same matter when it comes before it in the ordinary course of its jurisdiction. Upon consultation by the President about a certain legislation, it may give opinion that it is valid, but if the Act is challenged before it subsequently in a proper case, it remains free to declare it invalid. The chief utility of an advisory opinion is to enable the Government to secure an authoritative opinion as to the validity of a measure before initiating it.

**Rules of Court.**—Subject to the provisions of any law made by the President the Supreme Court may from time to time make rules for regulating generally the practice and procedure of the court, provided the approval of the President is obtained in the matter (Article 145). By virtue of this provision in the Constitution the Supreme Court has made the Supreme Court Rules, laying down the practice and procedure of the court and the Constitution of Benches for particular purposes.

**Officers, Servants, expenses of Supreme Court.**—The officers and servants of the Supreme Court are to be appointed by the Chief Justice of India or such other Judge or officer of the Court as he may direct, but the President may make rules requiring that such appointments are to be made after consulting the Union Public Service Commission. Even the conditions of their services are to be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the Court authorised by the Chief Justice of India, provided that rules relating to salaries, allowances, leave or pension are approved by the President ; but the power is subject to the provisions of any law that the Parliament makes.

The administrative expenses of the Supreme Court including all salaries, allowances and pensions, payable to or in respect of the officers and servants of the court are to be charged upon the Consolidated Fund of India, and fees or other moneys taken by the court are to form part of that Fund. (Article 146).

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## CHAPTER V

### COMPTROLLER AND AUDITOR GENERAL OF INDIA

**Comptroller and Auditor-General of India. (Articles 148-151, 377).**—The Comptroller and Auditor-General is the most important officer under the Constitution. He stands at the centre of the system of Parliamentary control over the appropriation of the national moneys. He is absolutely independent of the Cabinet and is the guardian of the purse. It is his duty to see that not a penny is spent without the authority of the Parliament. The procedure of his appointment and removal and the statutory provision for emoluments make his position truly independent of the Executive control.

The Comptroller and Auditor-General of India is appointed by the President under Article 148 and before entering upon his office, he makes and subscribes before the President (or some person appointed in that behalf by him), an oath or affirmation in the following from :—

“I, A. B. having been appointed Comptroller and Auditor-General of India do swear in the name of God solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of office without fear or favour, affection or ill will and that I will uphold the Constitution and the laws” (Schedule 3, Form IV).

His salary is fixed by the Third Schedule of the Constitution to be Rs. 4,000/-per month. He is not eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office. The administrative expenses of his office, including all salaries, allowances and pensions are to be charged upon the Consolidated Fund of India (Article 146).

He is to be removed from office in the like manner and on the like grounds as a Judge of the Supreme Court. Thus he cannot be removed from his office except by an order of the President passed after an address by each House of Parliament

supported by a majority of the total membership of the Houses and by a majority of not less than two-third of the members of that House present and voting has been presented to the President of India in the same session for such removal on the ground of fraud, misbehaviour or incapacity. (Article 148).

The duties and powers of the Comptroller and Auditor-General in relation to the account of the Union and of the States are to be such as may be prescribed by Parliament under Article 149. His reports relating to the accounts of the Union are submitted to the President who shall cause them to be laid before each House of Parliament. His reports relating the accounts of a State are to be submitted to the Governor or Rajpramukh of the State, who shall cause them to be laid before the Legislative of the State (Article 151). He is to prescribe the form in which the accounts of the Union and of the States are to be kept provided the President approves it.

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## PART VI

### THE STATES

#### CHAPTER I—GENERAL.

In this part unless the context otherwise requires, the expression "State" [does not include the State of Jammu and Kashmir] (Article 152).

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#### CHAPTER II—THE EXECUTIVE.

**The Governor.**—The State Executive is like Union Executive Parliamentary. The powers of the Governor of the State are analogous to those of the President excepting that the Governor has no diplomatic, military, or emergency powers. The Governor is the Head of the State ; the Executive power of the State is vested in the Governor.

The Governor acts either directly or through officers subordinate to him, in accordance with this Constitution. All executive action of the State must be expressed to be taken in his name, he shall make rules providing how orders and instruments executed in his name shall be authenticated, and rules for the more convenient transaction of the Government of the State and for the allocation of the business among the ministers. (Article 166).

The Ministers shall be appointed by the Governor and they should hold office during the Governor's pleasure. (Article 164).

The Governor is to act on the advice of the Council of the Ministers ; in this way there is established a Cabinet Government as it functions in Great Britain. The only difference is that the formal Executive head of the United Kingdom is the

King, whose office is hereditary, whilst the Executive head of the State in India is the Governor who is appointed by the President for a period of 5 years. As regards the powers, privileges and functions of the Governor, they are similar to those of the King in the United Kingdom.

Article 153 provides that there shall be a Governor for each state. The Executive power of the State is vested in the Governor. But any function conferred by any existing law on any other authority shall not be deemed to have been transferred to Governor, and the Parliament of the State Legislature can make law conferring functions on any authority subordinate to Governor. (Article 154).

**Appointment of Governor.**—The Governor of the State shall be appointed by the President by warrant under his hand and Seal (Article 155). In this respect our Constitution has departed from the Federal principle underlying the Constitution of the United States of America and follows Canadian Precedent, providing for the appointment of the Governor of a State by the Executive head of the Union. But here the President will make the appointment with the advice of the Union Cabinet.

The principle of the appointment of the Governor was much debated in the Constituent Assembly and the arguments for the appointment by the President prevailed. The Constituent Assembly gave the following reasons.—

- (a) It would save the country from the evil consequences of an election run on personal issues, the millions of primary voters taking part.
- (b) If the Governor was elected by direct vote, he might think himself to be superior to the Premier who was returned by a single constituency and this might lead to frequent friction between Governor and the Premier. Thus it would run contrary to the parliamentary system of conventional Government where the Governor shall be only a constitutional head only and executive power being vested in the ministry



responsible to the Legislature it would really amount to the surrender of democracy.

- (c) The expenses involved in the election of the Governor would be much more in proportion to the powers invested in the Governor.
- (d) If the election of the Governor was run on party basis, he would indirectly be inferior to the Chief Minister, being his nominee and being subsidiary in importance to him. This would not be a desirable thing and it would lead to future rivalry for the leadership between them.
- (e) Through the provision of the appointment by the President the Union Government would be able to maintain intact its control over the State and thus save the country from the possibilities of disintegration.
- (f) It safeguards the independence of the Governor from the hands of the political parties and he would be something above politics.

Through the power of the appointment and removal, the President may secure better control over the Governor than he can have otherwise. But under the Constitution the Governor being only a Constitutional head the President's control in the day to day administration of the State cannot be as effective as it was under the Government of India Act of 1935. There is no scope of the Governor acting in exercise of his individual judgment or in his discretion. He is bound to act on the ministerial advice and the President shall not have any power of general superintendence over the State Administration as was exercised by the Governor General under Section 54 of the Government of India Act 1935.

**Term of office.**—The Governor shall hold office during the pleasure of the President. The Governor may by writing under his hand addressed to the President resign his office. The term of his office shall be 5 years. He may continue to hold office until his successor enters upon his office. (Article 156). In the United States of America the State Governor



may be removed by the members of the State Legislature and may be recalled by popular vote. In Canada the Governor may be removed by the Governor General for the cause assigned. In Australia the Governor of a State holds office during the pleasure of the Crown ; he cannot be removed by the Governor-General and has no responsibility to the latter.

**Qualification.**—Article 157 provides that no person shall be eligible for the appointment of the Governor unless he is a citizen of India and has completed the age of 35 years.

The Governor shall not be a member of either House of Parliament or a House of the State Legislature and if such a member is appointed Governor, he shall be deemed to have vacated the seat in that House on the date on which he enters upon his office as Governor.

The Governor shall not hold any other office of profit. He shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments allowances and privileges as may be determined by the Parliament by law and until provision in that behalf is so made such emoluments, allowances, and privileges as are specified in the Second Schedule. The emoluments and allowances of the Governor shall not be diminished during his term of office. (Article 158).

Before entering upon this office every Governor and every person discharging the functions of the Governor has to make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or in his absence, the senior-most judge of that court available, an oath or affirmation in the prescribed form given below—

I. A. B., do swear in the name of God  
solemnly affirm that I will faithfully execute the office of Governor (or discharge the function of the Governor) of.....(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of.....(name of the State). (Article 159).

Article 160 gives the President power to make such provision as he thinks fit for the discharge of the functions of the Governor of State in any contingency not provided for in this Chapter.

**Powers of the Governor.**—The Governor is the *de jure* head of the State as the powers correspond to the prerogative of the British Crown. He has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the Executive power of the State extends. (Article 161).

**Extent of the Executive power of the State.**—The Executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws, but this power is subject to the provisions of this Constitution and in any matter with respect to which the Legislature of the State as well as Parliament has power to make laws. the Executive power of the State shall be subject to and limited by the Executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof. (Article 162).

The effect of Article 162, read with Article 73 is as follows :—

- (a) The Executive head of the State shall have exclusive power in respect of the subjects enumerated in List 2 of Schedule VII.
- (b) The Executive authority of the State will also extend to matters included in List 3, except as provided in Constitution or in any law made by the Parliament.
- (c) The State Executive shall have no authority over the subjects enumerated in List 1.

**Council of Ministers.**—Article 163 provides as follows:—

- (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor

in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164 provides as follows :—

(1) The Chief Minister shall be appointed by the Governor and the other Minister shall be appointed by the Governor on the advice of the Chief Minister, and the Minister shall hold office during the pleasure of the Governor :

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of Tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

The effect of Articles 163 and 164 is the establishment of the Cabinet system of Parliamentary Government in the State. The Governor of a State has no power to preside over or to be present at the meetings of the Council of Ministers. The relation between the Governor and his Ministers is the same as that between the President and his Ministers with this difference that the President is not empowered to exercise some functions in his discretion without taking the advice of his Ministers but this discretionary power of the Governor is conferred by the Constitution only, but Governor of Assam who has to carry on the administration of the tribal area is an agent of the President and acts in his discretion, until a notification is issued under Paragraph 18(3) of Sixth Schedule ; secondly, para 9 sub-clause (2) of the same Schedule provides that the Governor in his discretion has to decide the disputes to the share of mining royalties between the Governor of Assam and a District Council.

Thus to all practical purposes the Governor is the Constitutional Head of the State Executive as in Canada and Australia. The real necessity and importance of the Governor lies in the period of the constitutional crisis when there are many parties in the Legislature, or the Premier might fail to bring about the compromise between the parties and harmonise policy. In such a period the Governor who is an independent head of the State, commanding respect from all parties, might succeed in harmonising the policy and interests of various groups and prove helpful in the formation of a coalition government. As Dr. Ambedkar pointed out in the Constituent Assembly, "the Governor shall have no function to discharge by himself and would have no power to override the Ministry in any particular matter, he would have the duty to advise the Ministry not as the representative of any particular party, but of the people as a whole, with the object of securing an impartial, pure and efficient administration." The role of the Governor is as a King to that of the King of Great Britain and this is

described by *Mr. Asquith* in the following memorable words :—

“He is entitled and bound to give his Ministers all relevant information which comes to him, to point out objections which seem to him valid against the course which they advise ; to suggest if he thinks fit, an alternative policy. Such instructions are always received by Ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter. But, in the end, the Sovereign always acts upon the advice which Ministers after (if need be) reconsideration, feel it their duty to offer. They give that advice well knowing that they can and probably will, be called upon to account for it by Parliament.”

The Council of Ministers is collectively responsible to the Legislative Assembly and every member of the Council of Ministers accepts responsibilities for every decision of the Cabinet. If the Minister is unable to accept responsibilities, the only alternative for him is to resign. If a Minister for any period of six consecutive months is not a member of the State Legislature, he ceases to be the Minister at the expiration of that period.

Article 157 provides that the Chief Minister shall communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for the Legislation. He shall furnish such information relating to the administration of the affairs of the State and proposals for the Legislation as the Governor may call for; and if the Governor so required he shall submit for the consideration of the Council of the Ministers any matter upon which a decision has been taken by a Minister but which has not been considered by the Council. This provision exists in the Constitution for checking hasty steps by the Ministers. They are the exact counterpart of the British Constitution and Council of Ministers ; under this Constitution they secure harmonious working between the Governor and the Cabinet Ministers. Thus a machinery is provided by which they can adjust policy and work in the day to day working of the administration and save the administration from taking hasty steps.

**Privileges of the Governor.**—These are incorporated in Article 361 of the Constitution which is as follows :—

- (1) He shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done (or purporting to be done) by him in the exercise and performance of these powers and duties ; but a person can bring appropriate proceedings against the Government of a State.
- (2) No criminal proceedings whatsoever shall be instituted or continued against the Governor of a State in any court during his term of office.
- (3) No process for the arrest or imprisonment of the Governor of a State shall issue from any court during his term of office.
- (4) No civil proceedings in which relief is claimed against the Governor of a State, shall be instituted during his term of office in any court in respect of any act done (or purporting to be done) by him in his personal capacity, whether before or after he entered upon his office as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the Governor or left at his office stating (i) the nature of the proceedings, (ii) the cause of action therefor, (iii) the name, description and place of residence of the party by whom such proceedings are to be instituted and (iv) the relief which he claims.

**The Advocate-General of the State.**—The Governor of each State shall appoint a person who has qualified to be appointed a Judge of the High Court to be Advocate General of the State. He shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine. The duty of the Advocate General is to give advice to the Government and the State upon such legal matters and perform such other duties of legal character as may from time to time be referred or assigned to him by the



Governor and he has to discharge the function conferred on him by or under this Constitution or any other law for the time being in force.

The Governor in this respect is to act on the advice of the Ministers. The salary of the Advocate-General is not charged upon the Consolidated Fund of the State (Article 202 sub-clause 3); thus it is subject to the vote of the Assembly, and the Advocate-General cannot thus be independent of the Government of the day as he was under the Act of 1935. He has a right to speak and take part in the proceedings of the Legislatures, but is not entitled to vote. (Article 177).

### CHAPTER III

#### The State Legislature.

**Its composition.**—In every State there shall be a State Legislature which shall consist of the Governor, and

- (a) In the State of Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh and West Bengal, two Houses, one known as Legislative Council and the other as Legislative Assembly.
- (b) In other States one House known as Legislative Assembly. (Article 168).

Article 169 provides that the Parliament may by law provide for the abolition of the existing Legislative Council of a State or for the creation of such Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-third of the members of the Assembly present and voting.

**Legislative Assembly.—its composition and duration, (Articles 170, 172, 333-334).**

Articles 170, 172, 333 and 334 tell how and what a State Legislative Assembly is composed of,



The Legislative Assembly of each State shall be composed of not more than 500 and not less than 60 members chosen by direct election and the representation of each territorial constituency in the Legislative Assembly of a State shall be equal on population basis. The total number of seats will be fixed in the manner as Parliament may by law determine. But the Governor of a State may, (if he is of opinion that the Anglo-Indian Community needs representation in the Legislative Assembly of the State and is not adequately represented therein) nominate such number of members of the community to the Assembly as he considers appropriate. Such a reservation shall, after 10 years, cease.

**Tenure of Legislative Assembly. (Article 172)**—Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years, and no longer and the expiration of the said five years shall operate as a dissolution of the Assembly. But the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament for one year at a time and not extending in any case beyond six months after the Proclamation has ceased to operate.

**Its Officers. (Articles 178-181)**—Every Legislative Assembly of a State shall elect a Speaker and a Deputy Speaker, (Article 178); they shall vacate their seats if they cease to be members of the Assembly. They may resign their office by writing under their own hands addressed to each other. They may be removed from their office by a resolution (moved after 14 days' notice) passed by a majority of all the then members of the Assembly; (Article 179). In the absence of the Speaker, his duties shall be performed by the Deputy Speaker; (Article 180). The Speaker or the Deputy Speaker shall not preside while a resolution for his removal from office is under consideration, but the Speaker shall have the right to speak in, and otherwise to take part in the proceedings of the Legislative Assembly while any resolution for his removal from office is under consideration.

**Qualification for its Membership. (Article 173)**—A person shall be a Member of the Legislative Assembly if he

is (1) a citizen of India, (2) is twenty five years of age, and (3) possesses any other qualification prescribed by Parliament.

**Oath or Affirmation. (Articles 188 and 193).—**Every member of the Legislative Assembly of a State shall, before taking his seat, make and subscribe before the Governor (or some person appointed in that behalf by him) an oath or affirmation in the following form :—

“I, A. B. having been elected (or nominated) a member of the Legislative Assembly (or Legislative council do swear in the name of God that I will bear solemnly affirm true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.” (Schedule III, Form VII).

If a person sits or votes as a member of the Legislative Assembly of a State before he has complied with the requirements of the Article 188 or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by any law he shall be liable, in respect of each day on which he so sits or votes, to a penalty of five hundred rupees to be recovered as a debt due to the State ; (Article 193).

**Disqualification of members (Article 190-193).—**A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly of a State :—

- (a) If he holds any office of profit (other than that of a Minister) under the Government of India or the Government of any State specified in the First Schedule ;
- (b) If he is of unsound mind and stands so declared by a competent court ;
- (c) If he is an undischarged insolvent ;
- (d) If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State ;

- (e) if he is so disqualified by or under any law made by Parliament. (Article 191).

**Effect of disqualification. (Article 190).**—On his becoming subject to any of the above disqualification his seat shall thereupon become vacant.

If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned above, the question shall be referred for the decision of the Governor whose decision (after obtaining the opinion of the Election Commission thereon) shall be final.

**Disabilities of Members.**—1. No person shall be a member of both Houses of the Legislature of a State nor shall he be a member of the Legislature of two or more States specified in the First Schedule ;

2. If for a period of sixty days a member of a House of the Legislature of a State is, without permission of the House, absent from all meetings thereof, the House may declare his seat vacant.

**Powers, Privileges and immunities of State Legislature and their Members.**—1. There shall be freedom of speech in the Legislature of every State.

2. No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature (or any committee thereof) and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings. (Article 194).

**Legislative Council. Its Composition and duration. (Articles 171-172).**—The Legislative Council of a State is to consist of a total number of members not exceeding one-third of the total number of members in the Legislative Assembly of that State. The total number of members in the Council of a State shall be at least 40. Out of these :—

- (a) one third shall be elected by electorates consisting of members of Municipalities, District Boards and other Local authorities as specified by the Parliament.
- (b) one twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any University in the territory of India.
- (c) one twelfth shall be elected by teachers of at least three years standing in educational institutions not lower in standard than that of a secondary school.
- (d) one third shall be elected by the members of Legislative Assembly of the State.
- (e) the remainder shall be nominated by the Governor. These shall consist of persons having special knowledge or practical experience in Literature, Science, art, co-operative movement and social service.

The Legislative Council of a State shall not be subject to dissolution, but one-third of the members thereof shall retire on the expiration of every second year in accordance with the provisions made in that behalf by Parliament.

**Officers of the Legislative Council. (Articles 182-185).—**

The Legislative Council of every State shall choose two members of the Council to be respectively Chairman and Deputy Chairman thereof who shall vacate their office if they cease to be members of the Council. They may, by writing under their hands, resign their office. They may be removed from their office by a resolution of the Council passed (after 14 days' prior notice) by a majority of all the then members of the Council (Article 183). They shall not preside while a resolution for their removal from office is under consideration. But the Chairman shall have the right to speak in, and otherwise to take part in the proceedings of the Legislative Council while any resolution for his removal from office is under consideration in the Council (Article 185).

**Qualifications for Its Membership. (Article 173).**—A Member of a Legislative Council shall be (1) a citizen of India, (2) Thirty years of age, and (3) possess any other qualification laid down by Parliament.

**Oath or affirmation. (Articles 188 and 193).**—Every Member of the Legislative Council of a State shall before taking his seat, make and subscribe before the Governor, (or some person appointed in that behalf by him) an oath or affirmation in the following form :

I, A. B. having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter. (Schedule III Form VII).

**Penalty for sitting and voting without oath etc. (Article 193).**—If a person sits or votes as a Member of the Legislative Council of a State before he has complied with the requirements of Article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by any law he shall be liable in respect of each day on which he so sits or votes, to a penalty of five hundred rupees to be recovered as a debt due to the State. (Article 193).

**Disqualification of Members. (Articles 190-193)**—A person shall be disqualified for being chosen as and for being a member of the Legislative Council of a State :—

- (a) if he holds any office of profit (other than that of a Minister) under the Government of India or the Government of any State specified in the First Schedule ;
- (b) if he is of unsound mind and stands so declared by a competent court ;
- (c) if he is an undischarged insolvent ;

- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under an acknowledgement of allegiance or adherence to a foreign State ;
- (e) if he is so disqualified by or under any law made by Parliament ; (Article 191).

On his becoming subject to any of the above disqualifications his seat shall thereupon become vacant.

**The disabilities of the Members. (Article 190) :—**

1. No person shall be a member of both Houses of the Legislature of a State nor shall he be a member of the Legislatures of two or more States specified in the First Schedule.
2. If for a period of sixty days a member of a House of the Legislature of a State is, without permission of the House, absent from all meetings thereof, the House may declare his seat vacant.

**The powers, privileges and immunities of Members.  
(Article 194)**

1. There shall be freedom of speech in the Legislature of every State.
2. No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature (or any committee thereof) and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings. (Article 194).

**General Procedure.**

The House or Houses of the Legislature shall be managed to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session. However, the Governor may from time to time summon the Houses or either House to meet at any time and place, he may prorogue the House or Houses, or he may dissolve the Legislative Assembly (Article 174).



The Governor has the right to address the Legislative Assembly either each House or both Houses together. The Governor may send message to the House or Houses of the Legislature whether with respect to a Bill then pending in the Legislature or otherwise. (Article 175).

At the commencement of every session the Governor shall address the Legislative Assembly or in the case of the State having a Legislative Council both Houses assembled together and inform the Legislature of the cause of its summons. (Article 176).

Every Minister and Advocate General shall have the right to speak in, and otherwise to take part in the proceedings of the Legislative Assembly as well as Legislative Council ; they are entitled to take part in the proceeding of any committee of the Legislature of which they may be named member ; but they shall not be entitled to vote unless they are members of the House. (Article 177).

**Voting in Houses.**—All questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting other than the Speaker or Chairman, who shall not vote in the first instance, but shall have casting vote in the case of an equality of votes.

The *quorum* to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no *quorum* the Speaker or Chairman, shall either adjourn the House or suspend the meeting until there is a *quorum*.

**Legislative Procedure.**—Except for Money Bills and Bills making provision for financial matters, the Bill may originate in either House of the Legislature of the State. Such a Bill



shall not be deemed to have been passed unless it has been agreed to by both Houses.

The Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof. A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on dissolution of the Assembly.

A Bill which is pending in the Legislative Assembly or which has not been passed by the Legislative Assembly is pending in the Legislative Council shall lapse on the dissolution of the Assembly. (Article 196).

A Bill may originate in either House of the Legislature of a State which has a Legislative Council. Such a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State unless it has been agreed to by both Houses.

If after a Bill (other than a Money Bill) has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council (a) the Bill is rejected by the Council, or (b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it, or (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may pass the Bill again in the same or in any subsequent session with or without such amendments, and then transmit the Bill as so passed to the Legislative Council.

If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council, (a) the Bill is rejected by the Council, or (b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it, or (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have

been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

**Money Bill. (Article 199).**—Exactly similar provisions with respect to Money Bills in Parliament are discussed in Articles 109 and 110 above.

A Money Bill is one which deals with any of the following matters, namely—

- (a) The imposition, abolition, remission, alteration or regulation of any tax;
- (b) The regulation of the borrowing of money or the giving of any guarantee by the State or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
- (c) The custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) The appropriation of moneys out of the Consolidated Fund of the State;
- (e) The declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;
- (f) The receipt of money on account of the Consolidated Fund of the State or the Public Account of the State or the custody or issue of such money. [Article 199 (1)].

But a Bill shall not be deemed to be a Money Bill merely because it provides for (i) the imposition of fines or penalties, or (ii) the demand of fees for licenses, or (iii) the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes. [Article 199(2)].

If any question arises whether a Bill introduced in Legislature of a State which has a Legislative Council is a Money Bill or not, decision of the Speaker of the Legislative Assembly of such State thereon shall be final. [Article 199(3)].

The following is the procedure in respect of a Money Bill :—

(1) A Money Bill or amendment with respect thereto shall not be introduced or moved except on the recommendation of the Governor. But no such recommendation shall be required for moving an amendment making provision for the reduction or abolition of any tax. [Article 207(1)].

(2) A Money Bill shall not be introduced in a Legislative Council. [Article 198(1)].

(3) After a Money Bill has been passed by the Legislative Assembly of States having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations and the Legislative Council shall, within fourteen days from the date of the receipt of the Bill, return the Bill to the Legislative Assembly, which may thereupon either accept or reject all or any of the recommendations of the Legislative Council : [Article 198 (2)]. If it is not so returned within the said 14 days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

(4) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(5) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(6) There shall be endorsed on every Money Bill the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

**Governor's Assent. (Article 200).**—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President :

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom :

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

**President's Assent. (Article 201).**—When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom :

Provided that, where the Bill is not a Money Bill the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and if it is

again passed by the House or Houses with or without amendment it shall be presented again to the President for his consideration.

This Article provides the President of India with the power of Veto over State Legislation ; this power is not to be exercised directly, thus depending on the Governor's action to reserve the Bill for President's assent. The State Legislature has no means to over-ride the President's Veto, so the Union's control over State Legislature shall be absolute and no grounds are provided by the Constitution upon which the President shall be entitled to refuse his assent ; his powers are very wide, without any limitations. As the Governor is the nominee of the President, the power of direct consultation will be verbally available to the President through the Governor. Further no time limit is fixed by the Constitution for the President either to declare his assent or refusal thereto. Therefore the President can keep the Bill of State Legislature pending at his hand for an indefinite period of time without expressing his mind.

In this respect the Indian Constitution departs from the strictly Federal Constitution like that of the United States of America where, the States being autonomous within their sphere, there is no scope for the Federal Veto against measures passed by a State Legislature. In Australian Constitution the Governor-General has no Veto power. Section 90 of the Canadian Constitution, however, confers upon the Governor-General the power of refusing his assent to a Provincial Legislation either directly or on being reserved by the Governor for his assent.

**Procedure in Financial Matters.**—The procedure in financial matters relates to annual financial statement (Articles 202 and 207) ; estimates (Article 203), Appropriation Bills (Article-204), votes on account, votes of credit and exceptional credits.

**Annual Financial Statement.**—It is a statement of the estimated receipts and expenditure of the State for the year. The Governor shall cause it to be laid before the House or Houses of the Legislature of the State in respect of every financial year. [ Article 202 (1)].

Estimate of expenditure and the Annual Financial Statement shall show separately :—

- (a) the sums required to meet expenditure which are charged upon the Consolidated Fund of the State,
- (b) the sums required to meet other expenses from the same Fund. However, it shall distinguish expenditure of revenue account from other expenditure.

The following expenditure shall be charged on the Consolidated Fund of the State :—

- (a) the emoluments and the allowances of the Governor and other expenditure relating to his office ;
- (b) the salaries and allowances of the Speaker and Deputy Speaker of the Legislative Assembly and the Chairman and Deputy Chairman of the Legislative Council ;
- (c) debt charges including interest, sinking fund and redemption charges and other expenditure in respect of loans and the services and redemption of debt ;
- (d) the salaries and allowances of the High Court Judges ;
- (e) any sums required to satisfy any judgment, decree or award of any Court or arbitral Tribunal ;
- (f) any other expenditure declared by this Constitution or by the Legislature of the State by law to be so charged.

Article 207, sub-clause (3) provides that a Bill, which if enacted and brought into operation is to involve expenditure from the Consolidated Fund of the State, shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

*Firstly*—Estimate relating to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly but it may discuss the estimates ;

*Secondly*—So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly which shall have power to

assent to any demand, or to assent any demand subject to reduction of the amount ;

*Thirdly*—No demand for a grant shall be made except on the recommendation of the Governor. This last provision brings into light the importance of position of the Governor under the Constitution. (Article 203).

**Appropriation Bills. (Articles 204-205).**—Appropriation Bills provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet :—

(a) the grants made by the Assembly and (b) the expenditure charged on the Consolidated Fund of the State. These Bills are introduced after the grants under Article 203 are made. No Money is to be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of Article 204.

If the grant under Article 204 is found to be insufficient or when a need has arisen for supplementary or additional expenditure upon some new service or if any money has been spent on any service during a financial year the Governor shall cause to be laid before the House (or Houses of the Legislature) another statement showing expenditure or a demand for excess expenditure. (Article 205).

**Votes on account, votes of credit and exceptional grants. (Article 206).**—The Legislative Assembly of a State has power (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year, (b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with exact details, and (c) to make an exceptional grant which forms no part of the current service of any financial year and the Legislature of the State has also the power to authorise the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

**Language of the Legislature. (Article 210).**—The business in the Legislature of a State is to be carried on in the



official language of the State or in Hindi or in English. But after 26th January, 1965 English shall not be used.

**Restriction on certain discussions. (Article 211) :**

No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

**Effect of irregularity in procedure. (Article 212).**

The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

**Rule-making Power. (Articles 208 and 209).**

Articles 208 and 209 provide that the State Legislature may make rules for regulating its procedure or the conduct of its business, subject to the provisions of this Constitution.

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CHAPTER IV.

**Legislative Power of the Governor.**

Article 213 of the Constitution confers very essential Legislative Powers on the Governor to promulgate Ordinances during recess of the Legislature and it is in the following words :—

“(1) If at any time except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require :

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if :—

- (a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature ; or
- (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President ; or
- (c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance :—

- (a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period, a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council ; and
- (b) may be withdrawn at any time by the Governor.

*Explanation.*—Where the Houses of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this Article makes any provision which would not be valid if enacted

in an Act of the Legislature of the State assented to by the Governor, it shall be *void* :

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List an Ordinance promulgated under this Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him. Ordinance-making power of the Governor is in many respects similar to that of the President under Article 123, with certain changes. However, in certain cases mentioned above, instructions from the President are required for making an Ordinance, thus there may be the hands of the Union Executive in framing the State Legislation for temporary periods by means of Ordinance. As in the case of Ordinance made by the President, the courts have no power to question the validity of the Governor's Ordinance on the ground that there are no sufficient reasons for promulgating Ordinance or that it was made *malafide* to circumvent the ordinary law or to avoid the Legislature. However courts can question its validity on the ground of Legislative competence and on no other ground.

The satisfaction of the Governor about the necessity of immediate action and of promulgating the Ordinance is final and cannot be questioned and is not justiciable in the court of Law : (*Jnan Prasanna vs. Province of West Bengal*;<sup>1</sup> *Haran Chandra vs. State of West Bengal*<sup>2</sup>).

This power in the hands of the Governor is meant to provide for any emergency when the Legislature is not sitting. Such an occasion arises very often because the activities of the State embrace very wide fields of social and economic spheres, almost touching every walk of citizen's life in the welfare State that has been established in this country under this Constitution. This provision has been utilised by the States

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1. A. I. R. 1949 Cal. I (F. B.).

2. A. I. R. 1952 Cal. 907.

in hundreds of cases during the short span of five years. Moreover, it provides an easy and quick way of making Legislation for any emergent matter without delay, in the hope that it will be accepted by the Legislature when it meets after full consideration by it. Thus it has become a very important Legislative process and such provisions exist almost in all the Constitutions of the World. Similar provisions are to be found in Section 88 of the Government of India Act, 1935.

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## CHAPTER V

### The High Courts in the States

Every State is provided with a High Court. (Article 214).<sup>1</sup>

**Court of Record.**—Every High Court is a Court of Record and has all the powers of such a court including the power to punish for contempt of itself. (Article 215).<sup>2</sup>

**Constitution of High Courts.**—The High Court consists of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. (Article 216).

**Appointment of Judge.**—A High Court Judge is to be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and he shall hold office until he attains the age of sixty years, [except in the case of an Additional or Acting Judge who holds office for the period for which he is appointed but not later than the age of 60 years.]<sup>3</sup>

A Judge may resign his office by writing under his hand addressed to the President ; he may be removed from the office by the President in the same manner as a Judge of the Supreme Court may be removed. A Judge will vacate his office on being appointed a Judge of the Supreme Court or on being transferred to another High Court in India by the President.

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1. Amended by Constitution (Seventh Amendment) Act, 1956.
  2. Amended by *ibid*.
  3. Added by *ibid*.

A person to be appointed a Judge of a High Court must be a citizen of India and must have held for at least ten years a judicial office in Indian territory or must have been for at least ten years an Advocate of the High Court in any State or of two or more such Courts in succession.

Any period during which a person has held judicial office after he became an Advocate is included in computing the period of ten years' standing as an Advocate. Any period during which a person has held office in any area comprised before August 15, 1947, within India as defined by the Government of India Act 1935, or has been an Advocate of any High Court in such area, is included in computing the ten years of holding of judicial office. (Article 217).

The provisions of clauses (4) and (5) of Article 124 of the Constitution regarding the removal of the Judges of the Supreme Court and the procedure for the presentation of an address apply to the Judges of the High Court. (Article 218).

Every Judge before entering upon his office has to make and subscribe an oath or affirmation before the Governor or some person appointed by him in the form set forth in the Third Schedule of this Constitution. (Article 219).

A person who has held office as a permanent High Court Judge after the commencement of the Constitution is prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other High Courts : (Article 220). This provision was inserted in order to safeguard the dignity and independence of the Judges. It is applicable even to the Judges appointed before the Constitution but continuing in the office thereafter.

The Judges are to be paid salaries as specified in the Second Schedule to the Constitution. (The Chief Justice four thousand rupees and any other Judge, 3,500 rupees per month). Every Judge is entitled to such allowances and to such rights in respect of leave and absence and pension as may from time to time be determined by or under law made by Parliament and until so determined, to such allowances, and

rights as are specified in the Second Schedule. But neither the allowances of a Judge nor his rights in respect of leave or absence or pension shall be varied to his disadvantage after his appointment. A Chief Justice or any other Judge who immediately before the commencement of this Constitution held the office of the Chief Justice or of a Judge respectively in any Province is entitled to receive in addition to the salary specified above as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement. Thus they may continue to draw the same salary which they drew before the commencement of the Constitution. (Article 221).

The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court in India. (Article 222).<sup>1</sup>

When the office of the Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose. (Article 223).

In case of temporary increase of work or arrears of work the President may appoint additional Judges, in the High Court for a period not exceeding two years; and during absence of a Judge the President may appoint an acting Judge. Persons to be appointed must have same qualifications as the permanent Judges.

**Jurisdiction.**—The Constitution has not directly defined the jurisdiction of High Courts, but it has defined it with reference to jurisdiction of the existing High Courts.

Article 225 preserves all the powers and jurisdiction possessed by the High Courts at the date of commencement of the Constitution, until a change is effected by any law passed by a competent Legislature. This Article does not confer on the High Courts any power or jurisdiction which they did not

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1. Clause (2) is omitted by the Constitution (Seventh Amendment) Act, 1956.



possess on that date. The proviso to this Article removes the bar that existed under section 226 (1) of the Government of India Act of 1935, to the original jurisdiction of the High Court in revenue matters.

**Writs.**—A new jurisdiction is conferred by Article 226 on the High Courts to issue writs almost like the jurisdiction conferred on the Supreme Court under Article 32 of the Constitution. While the Supreme Court's writ jurisdiction is conferred to issue writs for the enforcement of Fundamental Rights only, the High Courts are granted jurisdiction to issue writs, directions or orders within their territory to any person or authority, including the Government for the enforcement of any of the Fundamental Rights or for any other purpose also. Thus both the High Courts and the Supreme Court have concurrent powers to issue writs and orders at least for the enforcement of a Fundamental Right. Before the commencement of the Constitution only the High Courts of Bombay, Calcutta and Madras had this power to issue writs of prohibition, *certiorari*, and *quo warranto* and an order in the nature of *mandamus*, and that too only within the limits of the original jurisdiction.

The relief under Article 32 can be sought from the Supreme Court in the first instance without first resorting to the High Court under Article 226, because the remedy under Article 32 is itself a Fundamental Right guaranteed by that Article in the Constitution. There is no similar provision in the Constitution of the United States : (*Ramesh Thapper vs. State of Madras*).<sup>1</sup>

The matter contained in Article 226 is exhaustively dealt with under Article 32 (dealt with in the chapter on Fundamental Rights). Article 226 is in the following words :—

**“226. Power of High Courts to issue certain Writs.**—“(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to

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1. 1950, D. L. R. (S. C.) 42 (45).



issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

**Power of superintendence.**—The Constitution, by Article 227, gives every High Court the power of superintendence over all courts and tribunals within its territory except over a court or tribunal constituted by or under any law relating to the Armed Forces, and may call for return—from such courts, make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts, and prescribe forms in which books, entries and accounts shall be kept by the officers of such courts. The High Court may also settle fees for sheriffs, clerks and officers of the courts and to attorneys, advocates, and pleaders practising therein. The forms prescribed and the table of fees settled are not to be inconsistent with the provision of any law for the time being in force, and require the previous approval of the Governor.

Article 227 is in the following words :—

"(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may :—

- (a) call for returns from such courts ;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein :

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

The origin of the superintending jurisdiction of the High Court lies in the superintending jurisdiction of the King's Bench Court in England which that court enjoyed over all inferior tribunals in the realm. The Supreme Courts under the East India Company were vested with this power. After their abolition the High Courts in the Presidency Towns were given this jurisdiction by Section 9 of the Indian High Courts Act, 1861 known as Charter Act. The aforesaid section was replaced by section 107 of the Government of India Act, 1915, which provided the High Courts with powers of superintendence, judicial as well as administrative. The above section was succeeded by section 224 of the Government of India Act, 1935, providing for administrative superintendence only and not judicial superintendence. The present Article corresponds to the above provision of the Charter Act and the Government of India Act of 1915 and provides for judicial as well as administrative superintendence over other courts and tribunals in the territory in which it exercises jurisdiction. Before the Constitution the power of superintendence was conferred over those Courts only over which the High Courts exercised appellate jurisdiction but under the present Article jurisdiction of superintendence is extended over tribunals also and it is no longer necessary that the authority over which superintendence

is exercised, must be subject to the appellate jurisdiction of the High Court.

Article 227 vests the High Court with a special responsibility and power over the judicial institution in the State with the object of securing that such judicial and *quasi-judicial* institutions function properly and discharge their duty according to law. It makes the High Court the custodian of all justice within the territorial limits of its jurisdiction and arms it with a weapon that could be wielded for the purpose of seeing that justice is metted out fairly and properly. No limits or fetters or restrictions are placed on this power of superintendence which is judicial as well as administrative : *Jodhey vs. State*.<sup>1</sup>

By virtue of this Article the High Court may in proper cases, set aside or vary the order of the lower court, and it is to be construed in the same manner as the statutory provision which enables a party to challenge a decision of the court by appeal or revision. This power is judicial also ; *Bimla Prasad vs. State of West Bengal* <sup>2</sup> ; *In re Annamalai*<sup>3</sup> ; *Motilal vs. State*<sup>4</sup>.

The object of the Article is to make the High Court responsible for the entire administration of justice in the State and to vest in the High Court an unlimited reserve of judicial power which would be brought into play at any time when the High Court considers it necessary to draw upon the same : *Jodhey vs. State*.<sup>1</sup>

The power under this Article is an extraordinary one and is intended to be used only in exceptional cases and not as a substitute for ordinary appellate or revisional powers. It is to be exercised only where there has been a flagrant abuse of elementary principles of justice or *manifest* error of law patent on the face of the record or an outrageous miscarriage of justice. *Jodhey vs. State of U. P.*,<sup>1</sup> ; *Haripada Datta vs. Anenta Mandal*<sup>5</sup> ; *Madhusudhan vs. Shyam Das*<sup>6</sup> ; *In re Annamalai*<sup>3</sup>.

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1. A. I. R. 1952 All. 788.
  2. A. I. R. 1951 Cal. 258.
  3. A. I. R. 1953 Mad. 362.
  4. A. I. R. 1952 All. 963.
  5. A. I. R. 1952 Cal. 526.
  6. A. I. R. 1952 Rajasthan 23.

**Cases involving interpretation of Constitution.**—The High Court may withdraw a case pending in a court subordinate to itself if it is satisfied that it involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, and it may either dispose of the case itself or it may determine the said question of law and return the case to the court from which it was withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment. (Article 236).

**Officers and servants.**—All appointments of officers and servants of the High Court are to be made by the Chief Justice or such other Judge or officer of the Court as he may direct. But the Government of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the court shall be appointed to any office connected with the court except after consultation with the Public Service Commission; subject to any Act of the State Legislature, the condition of the service of officers and servants of the High Court are to be laid down by rules made by the Chief Justice of the court or by some other Judge or officer of the Court authorised by the Chief Justice to make them. Such rules relating to salaries, allowances, leave or pensions require the approval of the Governor of the State. The administrative expenses of the High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, are charged upon the Consolidated Fund of the State and any fees or other moneys taken by the Court form part of that Fund. (Article 229).

<sup>1</sup>The Parliament may by law extend the jurisdiction of a High Court to, or, exclude the jurisdiction of a High Court from, any Union territory. (Article 230).

Where a High Court exercises jurisdiction in relation to a Union territory nothing in this Constitution shall be construed—

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1. Substituted by the Constitution (Seventh Amendment) Act, 1956.

“(a) as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction :\*

The aforesaid Article lays down that where a High Court exercises jurisdiction outside the State where it has its principal seat, that extra-State jurisdiction shall not be affected by a State Legislature. That power is given exclusively to Parliament under Article 230.

Parliament may by law establish a common High Court for two or more States and a Union territory (Article 230).

Article 231 provides an interpretation to various terms used in this chapter and it is in the following words :

- (a) The references in Article 217 to the Government of the State shall be construed as a reference to the Governor of the State in relation to which the High Court exercises jurisdiction ;
- (b) The reference in Article 227 to the Governor shall, in relation to any rules, forms and tables for subordinate courts be construed as a reference to the Governor of the State in which the subordinate courts are situate ; and
- (c) The references in Articles 219 and 229 to the State shall be construed as a reference to the State in which the Court has its principal seat.”

The aforesaid provisions under the Chapter very clearly shows that the independence of the judiciary is well guaranteed and it cannot be interfered with by the Executive. Under our Constitution the Judiciary has to play a very vital role working of the Constitution itself and also in the maintenance of the balance between order and liberty and as a safeguard against the abuse of power by the Executive. The hands of the Executive cannot pollute the fair administration of Justice so long as the Constitution remains and every citizen can always have full confidence in the courts and its judges. Even the subordinate judiciary is made independent of the control by the Executive as the following chapter will show.

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\*Amended by the Constitution (Seventh Amendment) Act, 1956.

## CHAPTER VI

## Subordinate Courts

Appointments of persons to be, and the posting and promotion of, District Judges in a State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. A person, not already in service of the Union or the State shall be eligible for appointment as a District Judge if he has been for not less than seven years an Advocate or a Pleader and is recommended by the High Court for appointment (Article 233).

Appointment of persons other than District Judges to the Judicial Service of a State is to be made by the Governor in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. (Article 234).

The control over District Courts and courts subordinate thereto, including the posting and promotion of, and the grant of leave to, persons belonging to the Judicial Service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but the persons affected will have any right of appeal which he may have been provided under the law regulating the conditions of his service and the High Court shall observe the conditions of his service prescribed under such law. (Article 235).

Article 236 provides interpretation and is as follows :—

“In this chapter

(a) the expression “District Judge” includes Judge of a city Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge ;

(b) the expression “Judicial Service” means a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the posts of District Judge.”



"The Governor may by public notification direct that the foregoing provisions of this chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the Judicial Service of the State subject to such exception and modification as may be specified in the notification." (Article 237).

## PART VII

### The States in Part B of the First Schedule

[\* \* \* \* \*]

*Note.*—This Part is omitted by the Constitution of India, (Seventh Amendment) Act, 1956, Section 29 and the Schedule.

## PART VIII

### The Union Territories

The Union territories are formed by the centrally administered areas.\* Article 239 vests their administration in the President of India, acting to such extent as he thinks fit, through an administrator.

The President may make regulations for the peace, progress and good Government of the Union Territory of (a) the Andaman and Nicobar Islands, and (b) the Laccadive, Minicoy and Amindivi Islands. Such regulations may repeal or amend any Parliament Law or existing law. (Art. 240).

The Constitution gives the Parliament power to raise the Judiciary in [Union Territories]<sup>1</sup> to be a High Court or to constitute a High Court for it for all or any of the purposes of the Constitution. The provisions of Chapter V of Part VI of the Constitution shall apply in relation to every High Court of [Union Territories]<sup>1</sup> as they apply in relation to a High Court referred to in Article 214 subject to such modifications or exceptions as Parliament may by law provide. The existing jurisdiction of High Court before the commencement of the Constitution in relation to any Union Territory shall continue to exercise such jurisdiction in relation to their territory after such commencement.

\*See 1st Schedule Union Territories.

1. Substituted by the Constitution (Seventh Amendment) Act, 1956.



The power remains with the Parliament to extend or exclude the jurisdiction of a High Court for a State to or from any Union Territory or part thereof. (Article 241).

### **PART IX**

#### **The Territories in Part D of the First Schedule and other Territories not specified in that Schedule.**

[ \* \* \* \* \* ]  
[Repealed by the Constitution (Seventh Amendment) Act, 1956, Section 29 and the Schedule.]

### **PART X**

#### **The Scheduled Areas and the Tribal Areas**

These areas are not fully developed and it will take time before they are brought to the level of States in which they exist as small pockets. Therefore, Article 244 makes separate provision for their administration ; the provisions of the Fifth Schedule of the Constitution apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam, and the provisions of the Sixth Schedule apply to the administration of the Tribal area in the State of Assam. These special provisions are made so that special care may be taken of these areas in view of their peculiar social and other customs as well as their backwardness. It is very necessary that without much delay these areas should be fully developed and brought in line with the rest of the country. At present these areas with multitudinous problems exist in States. The President is to be kept informed of their administration and the executive power of the Union extends to the giving of direction to the State as to the Administration of the said areas. However, subject to the provisions of the Fifth and the Sixth Schedules, the Executive power of a State extends to the Scheduled Areas in that State, but the Governor may exclude any law from application or modify it or make Regulations in respect of transfer of land and money-lending Tribes Advisory Councils are to be constituted for welfare and reforms.

Even under the Government of India Act, 1935, sections 91 and 92 made special provisions for these areas, and special responsibility was placed on the Governor.

A comprehensive scheme for administration of Scheduled Areas and Scheduled Tribes is given in the Fifth and the Sixth Schedules of this Constitution.

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## PART XI

### RELATIONS BETWEEN THE UNION AND THE STATES

#### CHAPTER I—**Legislative Relations Distribution of Legislative Powers**

**General.**—The Constitution of India establishes federalism and the essence of federalism is the division of powers between the National Government at the Centre and the State Governments. The distribution of powers constitutes the pivot of federalism. As the executive power of a National Government is co-extensive with its legislative powers, the provisions dealing with the distribution of Legislative powers between the National Government and the federating units are very vital provisions in a Constitution, and they must be so resolved as to keep the Centre and the Units into harmony with each other.

The limitation of the powers of the Central Government and the Units is the cardinal principle of a federal form of Government. The scheme of distribution of powers depends on the peculiar political, economic and strategic conditions of the country. With the scheme of the distribution of powers is connected the question of sovereignty ; and each unit as well as the National Government has full sovereign status within its limited sphere.

The most important part in the scheme of the distribution of powers is the Residuary power. If it rests with the Central Government, the Constitution provides for a strong national government with very wide powers with the units having only limited powers, defined in the Constitution.

**U.S.A.**—The Constitution of the United States of America has enumerated the powers of the Union and left with the States all other powers not delegated to the Union or prohibited to the States ; the Federal Government has no general power to

make laws, it has got only enumerated powers. The residuary powers, that is the powers not delegated to the Union or prohibited to the State lie with the States; thus the States have very wide powers. In the Constitution of the United States of America there is no Concurrent Legislative list.

**Australia.**—In the Australian Constitution also, as in that of the United States, only the powers of the Commonwealth Parliament are enumerated and the rest is left with the Federating units; the States have all the residuary powers.

**Canada.**—The Constitution Act of Canada has divided the power of legislation between the Dominion Parliament and the Provincial Legislatures, giving them exclusive jurisdiction; there is no concurrent legislative list except in respect of agriculture and immigration; and in cases of repugnancy, Dominion Legislation prevails. The residuary power is also vested in the Dominion Parliament by providing in Section 91 that the Dominion Parliament can legislate for the peace, order and good Government of Canada in relation to all matters not coming within the subject enumerated in section 92, of the provincial list.

**Burma.**—In the Constitution of Burma there are only two Lists for the Union and the provinces and there is no Concurrent Legislative List; in the case of repugnancy and overlapping the Union legislation prevails. The residuary powers reside in the Union.

**Govt. of India Act.**—The Government of India Act, 1935 had made the three-fold distribution of legislative powers—Federal, Provincial and Concurrent. In case of overlapping as between the Lists, supremacy was to rest with the Federation. The allocation of residuary power was left in the hands of the Governor-General in his discretion and not allotted to either the Federal or Provincial Legislature. The Governor-General was to authorise any one of them to legislate on that subject.

In our present Constitution there is a three-fold distribution of legislative powers between the Union and the States; three legislative lists are provided, List I for the Union, List II for the State, and List III, the Concurrent List. In case of overlapping of a matter as between the three lists predominance is given to

the Union Parliament as under the Government of India Act. The power of the State Legislature to legislate even with respect to matters in the State List is made subject to the power of Parliament to legislate in respect of matters in the Union and Concurrent List [Article 246 (3)]. Even where State Legislature Legislates with respect to the matter included in the exclusive State List, the law will be void to the extent of its repugnancy with a Union law which Parliament is competent to make under the Constitution [Article 254 (1)]. In case of repugnancy between a State Law and the Union Law in the concurrent sphere, the latter will prevail. The State Legislation may prevail, notwithstanding such repugnancy, if the State Law was reserved for the President's assent and it has received his assent [Article 254 (2)]. The residuary power, that is the power not included in any one of the three lists, is in the Union (Article 248, Entry 97, List 1), as in the Canadian Constitution. Further under Article 249 of the Constitution, the Union Parliament is empowered to make temporary laws overriding the exclusive jurisdiction of the State Legislatures enumerated in the State List, if by a special majority the Council of States declares that this is expedient in the national interest. Thus the Parliament has very wide powers in cases of national emergency. No other Constitution has this feature which is peculiar to our own Constitution.

The original principle of federalism implied an agreement between two or more political communities which as between themselves were independent and autonomous, but realising a community of interests in certain matters they agreed to unite and put themselves under the control of a common Government which was to deal with the matters which were entrusted to it by them; in all other matters the political units remained independent and autonomous. Such an agreement between the federating States created a national State and the agreement was the Constitution of that national Government. In the United States the sovereign States had created the union by common agreement; when they proposed to federate they were anxious to part with the minimum powers to the National Government. The States surrendered only a portion of their sovereignty while retaining the rest to themselves but the working of the Constitution proved that in modern times with

the annihilation of distance and vast economic and social schemes becoming necessary for the welfare of the peoples it was necessary to have wider powers with the Federal Government. Under the American Constitution, which is a very short document, this purpose was achieved not by amendment of the Constitution but by interpretation of the Constitution itself by the Supreme Court, so as to give the Union Government much wider powers, consistent with the social, political, and economic requirements of a truly great nation.

The Canadian Constitution as well as the Australian Constitution were also the product of agreements between the component States which surrendered much of their powers in favour of the Union. As these Constitutions are of much later period than the Constitution of the United States and they had the experience of the working of the American Constitution, they parted with much wider powers in favour of the national Government.

Even in the Government of India Act, 1935 the three Legislative lists were prepared after taking the views of the three political groups in the country, the Hindus, the Muslims and the Rulers of the Indian States. The Hindus favoured a strong centre, the Muslims and the Indian Princes wanted very limited powers with the Centre.

When the Constituent Assembly of India met to frame a Constitution the conditions prevailing at the time of the framing of the Government of India Act 1935 did not exist. There was no question of Muslims as a political group; Suzerainty of the British Crown had lapsed and the Indian States had actually acceded to the Dominion of India. The Indian Independence Act, 1947 has set up the Dominion of India and made the Constituent Assembly of India a sovereign body without any fetters or restrictions on its powers to evolve and adopt a constitution in accordance with the needs of the country. However, the Constituent Assembly maintained the three divisions of legislative lists but these lists were enlarged in order to meet planning for the social and economic needs of a modern welfare State. The Constitution has provided a very strong Central Government. In the present Constitution, the Union List

contains 97 matters, the State List 67 matters, and the Concurrent List 47 matters.

**Position under our Constitution. (Article 245).—Extent of laws made by Parliament and by the Legislature of States :—**

- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

**Subject-matter of laws made by Parliament and by the Legislatures of States. (Article 246) :—**

- (1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
- (2) Notwithstanding anything in Clause (3), Parliament, and subject to Clause (1) the Legislature of any State [\*\*\*]<sup>1</sup> also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
- (3) Subject to Clauses (1) and (2), the Legislature of any State [\*\*\*]<sup>1</sup> has exclusive power to make laws for such matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India included in a State notwithstanding

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1. The words (specified in part A or Part B of the First Schedule) omitted by the Constitution (Seventh Amendment) Act, 1956.



that such matter is a matter enumerated in the State List.

According to Article 245 the Union Parliament has power to make laws for the whole or any part of the Indian Territory, and the Legislature of a State may make laws for the whole or any part of the State. No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. The aforesaid territorial jurisdiction of the Parliament as well as the State is subject to the other provisions of the Constitution. Article 243 sub-clause 2 and para 5 of the First Schedule are such provisions which take away the jurisdiction of the Parliament in respect of certain areas. The Fundamental Rights contained in Part III of the Constitution also curtail the powers of Parliament and the State Legislature. Both the Union Parliament and the State Legislature have within their Constitutional limits, preliminary powers of Legislation like any other Sovereign Legislature. Hence both may legislate either absolutely or conditionally. In case of conditional Legislation, the Legislature may leave to the discretion of some external authority, the time and manner of carrying its Legislation into effect and also the area over which it may extend. Both may make either a permanent or temporary Legislation. Both may authorise subordinate bodies to make bye-laws or regulations under the Statute for detailed administration. Both are competent to enact delegated Legislation. Both have power to legislate either prospectively or retrospectively.

The aforesaid Article 246 creates 3 lists in respect of the subject-matter of Legislation. These Lists are given in the Seventh Schedule. List 1 is the Union List in respect of which the Parliament alone has power to make laws; List 2 is the State List in respect of which a State Legislature has exclusive powers to enact laws; List 3 is the Concurrent List in respect of which the Parliament as well as the State Legislatures have power to legislate. Further, the Parliament has power to make laws with respect to any matter for any part of the territory of India which is not included in a State even though the subject-matter is enumerated in the State list. The words "notwithstanding anything....." in the beginning of Clau



1 and 2 and the words 'subject to Clauses 1 and 2 at the beginning of Clause 3 of the present Article, secure the predominance or supremacy of the Union Parliament in case of overlapping as between Lists 1, 2 and 3'. Thus if there is overlapping between a matter falling within the Federal list and the State list or if there is any overlapping between the federal list and the concurrent list, the subject, to the extent of the overlapping, is one exclusively federal, on which the State cannot legislate. If there is overlapping between the Concurrent and the State lists the subject is treated as within the Concurrent list, thus giving the Federal Legislature power to legislate in the matter.

The necessity for having a Concurrent List is provided by a desire on the part of the Constitution-makers to give uniformity to laws made by various States on the same subject and also to guide and encourage efforts and in some cases to provide remedies for mischief arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single State. While co-ordination of State laws on the same subject is necessary, local conditions varying from State to State make it incumbent upon State Legislatures to have the power of adapting General Legislation to meet the peculiar circumstances within the State.

Article 247 of the Constitution gives the Parliament power to establish additional courts for better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List. Such additional courts would deal exclusively with Union Laws.

Article 248 gives the residuary powers of Legislation to the Parliament and is in the following words :—

**Residuary Powers of Legislation. (Article 248).—**(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of these Lists.

Article 249 gives the Parliament powers to legislate with respect to any matter of the State List in the national interest, such national interest is to be determined by a declaration of the Council of States by resolution supported by not less than two-thirds of the members present and voting. The aforesaid resolution shall remain in force for such period not exceeding one year as may be specified therein but the resolution may be continued in force for a further period of one year at a time by another resolution of the Council of States passed in the original manner. This continuance can be done by resolution for unlimited number of times. The law made by Parliament in the aforesaid manner shall cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force except as respect to things done or omitted to be done before the expiration of the said period.

By the Parliament's assuming States, powers under this Article the State Legislature is not suspended and continues to have its powers over the State lists but State laws will be subject to Union Laws made under the present Article and the laws of repugnancy as laid down in Article 251 will come into action even as regards such matters of State List.

Article 249 is in the following words :—

**“Article 249. Power of Parliament to legislate with respect to a matter in the State List in the national interest.—**(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under Clause (1) shall remain in force for such period not exceeding one year as may be specified therein.

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the

manner provided in Clause (1), such resolution shall continue in force for a further period of one year from the date on which under this Clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under Clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period."

Article 250 gives the Parliament power to legislate in respect of State List when a proclamation of emergency is in operation. Such law will cease to have effect on the expiration of a period of six months after the proclamation ceases to operate except as respects thing done or omitted to be done before the expiration of the said period. This power is given to the Parliament so that it may adequately cope with any emergency.

Article 250 is as follows:—

**"Article 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.—**(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the Territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period."

Article 251 establishes the supremacy of Union Laws made by virtue of Articles 249 and 250 in respect of State List.

During the period of emergency or in national interest, the State Legislature is not suspended or superseded and may make any laws under the State List, but such laws will be valid only so far as they are not repugnant to Union Laws, so long as it continues to have effect.

Article 251 provides as follows :—

**“Article 251. Inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the Legislatures of States.**—Nothing in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said Articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long as only as the law made by Parliament continues to have effect, be inoperative.”

Article 252 provides, that the Legislatures of two or more States may agree that in respect of some subjects in State List a common law for them be made by Parliament. Such law made by the Parliament shall apply to such States and to any other States wherein the Legislature adopts it. Such a Parliament Act may be amended or repealed by an Act of Parliament in the same manner as the original Act was passed. The State Legislature cannot amend or repeal it even in respect of that State.

This provision fulfils the necessity for effecting co-ordination between the States in matters of common interest, *e. g.*, public health, agriculture, fisheries, forest.

Article 252 is as follows :—

**“Article 252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.**—(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws

for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Treaty making and implementing of treaties, agreements or conventions with other countries is the function of the Union Government. Article 253 provides that the Union Parliament can make any law for the whole or any part of the territories of India for implementing any treaty, agreement or convention with any other country or any decision made at any international conference, association or any other body. Thus the Union Parliament is empowered to invade the State List for the aforesaid purpose ; but it was necessary, otherwise it would have been impossible for the Union Government to implement its obligations under treaties or other international agreements if it was not able to legislate with respect to State subject in so far as it may be necessary for the purpose. This Article is in conformity with the object declared by Article 51 (c). The Constitutions of the United States of America and Canada also contain similar provisions.

Articles 253 and 254 provide as follows :—

**“Article 253. Legislation for giving effect to international agreements.**—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

**"Article 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—**(1) If any provision of a law made by the Legislature of a State is repugnant to 'any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State [\* \* \*]<sup>1</sup> with respect to ; one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

The aforesaid Article 254 lays down the rule of repugnancy which is a very essential factor in a Federal Constitution specially where the Union and the State Legislatures have been given Concurrent Legislative powers. Under our Constitution Legislation by both Legislatures relating to the subject-matter within list 3 is valid. Therefore this Article was enacted in order to resolve a conflict between the Clause (1) which lays down the General rule that in case of repugnancy of a State law with Union Law relating to the same subject-matter in the Concurrent list, the Union law will prevail and the State law will fail to the extent of repugnancy, whether the State law is prior or subsequent to the Union Law.

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1. The words (specified in Part A or Part B of the First Schedule) were omitted by the Constitution (Seventh Amendment) Act, 1956, Section, 29, and the Schedule.



To the aforesaid general rule Clause (2) lays down an exception that if the President assents to the State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union. This exception is availed subject to a proviso that the Parliament can enact in any time any law with respect to the same matter and it gives the Parliament power to add to, to amend or vary or repeal the law so made by the State Legislature. Thus even the President's assent cannot save the State laws regarding the Concurrent list from being repealed or amended by the Parliament.

The question of repugnancy is of great importance inasmuch as this is the test by which the courts of law determine whether a law is *ultra vires* or *intra vires* and whether it is valid or invalid. In case of repugnancy the State law becomes void to the extent of repugnancy. When the repugnancy is removed by repeal of the Union Law itself, the State law would revive and become again operative. Thus the State law remains in abeyance until the Union Law is repealed by the Parliament. (*Carter vs. Egga and Public Board*<sup>1</sup> ; *A. G. for Ontario vs. A. G. for Canada*).<sup>2</sup>

**Article 255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.**—“No Act of Parliament or of the Legislature of a State [\*\*\*]<sup>3</sup> and no provision in any such Act shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if the assent to that Act was given :—

- (a) where the recommendation required was that of the Governor, either by the Governor or by the President ;

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1. (1912) 66 C. L. R. 557.

2. (1896) A. C. 348.

3. The words (specified in Part A or Part B of the First Schedule) were omitted by the Constitution (Seventh Amendment) Act, 1956, Section 29 and the Schedule.



- (b) where the recommendation or previous sanction required was that of the President, by the President."

This Article provides a principle that in cases where the Constitution requires that a Bill cannot be introduced without recommendation or previous sanction of the President, or Governor the subsequent assent of that authority or of a higher authority in the case of Governor shall save a law from invalidity. Recommendation of the President is required under proviso to Article 3, Article 117, sub-clauses (1) and (3) and Article 274 (1). The recommendation of Governor is required under Article 207, Clauses (1) and (3).

## CHAPTER II

### Administrative Relations

**General.**—The Federal Government involves the setting up of a dual Government system and the division of powers between a Union and the States. In a big country like India the problem of dual Government is much magnified on account of the extent of territory, and diversified conditions in social and economic spheres. The success in working of the Federal System depends upon the maximum of co-operation, and co-ordination between the State Governments *inter se* as well as between the Union and the State. Chapter II involves the scheme for co-ordination between a State, for settling disputes and for giving directions to the States by the Government of India; in the periods of emergency the Constitution is so framed that Central Government can take over control over the States and the Federal system is converted into a Unitary Government. But even in normal times this chapter has devised techniques for control over the States by the Union Government to ensure that the administration of the State Government does not interfere with the legislative and executive policies of the Union and also to ensure efficiency, security and vitality in each component unit. It is absolutely essential for making the country strong and united, working under a planned economy. There are four methods and agencies by which the Union Government exercises its control over the States. These are the powers of the

Central Government to give direction to the State Government, the power of delegation of Union functions to the State Government under Article 258 all-India services, and grants-in-aid under Article 275 by the Union to the States. The Union has power of giving direction to the State Government for the following purpose :—

(1) To ensure due compliance with the Union laws and existing laws.

(2) To ensure that the exercise of executive power of the State does not interfere with the exercise of the executive power of the Union.

(3) To secure construction and maintenance of means of communication of military importance to the State.

(4) To ensure protection of railways within the State. (Articles 256 and 257).

**U. S. A.**—The Constitution of the United States of America contains no such provision for direction by the Union to the State. In those days when a Federal Constitution was framed the function of the State was regarded to be mere police action, in the beginning of the twentieth century and with the rise of the conception of the welfare state the necessity for such power with the Union Government was realised even in the United States and and by the Judicial interpretation of the same Constitution without any amendment, the Union Government has assumed such wide powers of the State Government.

In the present day World and the state of the society in which it is not possible for one State to maintain complete aloofness from the other States inspite of the assumption of complete internal sovereignty by the State under a federal scheme, co-operation and adjustment of policy between the various States is absolutely necessary. Every Federal Constitution lays down rules of conduct which the State and the Union must observe in their relationship with each other.

These rules and agencies relate to the following matters :—

(a) Recognition of the public acts, records and proceedings of each other.

- (b) Rendition of Criminals.
- (c) Extra-judicial settlement of disputes.
- (d) Co-ordination between States.
- (e) Immunity from mutual taxation.
- (f) Freedom of inter-State trade, commerce and intercourse.

Most of these rules and principles are incorporated in this Chapter.

Article 256 is as follows :—

**Obligations of States and the Union :—**

“The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.”

In this Article a duty is cast on the States to comply with the laws made by the Parliament and any existing laws which apply in that State. This provision was necessary because in our Constitution there is division of Executive and Legislative powers between the Union and the States but it is not convenient always for the Union Government to establish separate administrative machinery for every State for the enforcement of its laws. It is bound to be complied with through the State machinery. It is for the State Executive to enforce the Union laws in the State. For the enforcement of its laws the Executive of the Union is further given power to give direction to the State Government. Such a measure was very necessary in view of the fact that while the States are autonomous, limited and residuary, responsibilities and powers and the Government of the whole country are vested in the Government of India. Thus an effective system of administration by the Union and its constituent units is provided.

**Control of the Union over States in certain cases.**  
**Article 257 :—**

“(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the Executive power of the Union shall extend to the giving of such direction to a State as may appear to the Government of India to be necessary for that purpose.

(2) The Executive power of the Union shall also extend to the giving of direction to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance :

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The Executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under Clause (2) as to the construction or maintenance of any means of communication or under Clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.”

According to Clause (1) of this Article Executive power of the State is to be so exercised as not to impede or prejudice the exercise of the Executive power of the Union. In this respect the Union Executive has further absolute power to give necessary direction to the State Government. This provision ensures that there shall be no conflict between the Executive policy of the Union and that of the States. The Executive power of the Union is to prevail over those for the constituent units.

Clause (2) of this Article empowers the Union Executive to give directions to the States for the construction and maintenance of the means of communication which the former considers to be of national or military importance. Although communications is the State subject *vide* Entry 13 of List 2 the Union control for the aforesaid purpose is absolute and necessary in the interest of the country. It further lays down in the proviso that this clause shall not be taken to restrict the power of Parliament to declare highways or waterways to be national highways or national waterways; it does not restrict the power of the Union with respect to such highways or waterways; this has recognised the power of the Union to control and maintain means of communications as part of its function with respect to naval, military and the air force works.

Clause (3) empowers the Union Executive to give direction to the State for protection of the railways, although railways are the Union subject but public including railway police is the State subject; hence there was the necessity of such a provision in the Constitution.

In case of extra cost incurred by a State in complying with directions in respect of communications and railways the Union Government will bear such cost but if there is a disagreement about the amount it shall be determined by an arbitrator appointed by the Chief Justice of India.

**Power of the Union to confer powers etc. on States in certain cases. Article 258 :—**

“(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the Executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this Article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties."

The Article provides for directions of the Union in respect of Union's function to the State Governments or to its officers; in this respect the State or its officers work as agents of the Union Government; this is to be done by the consent of the State itself. The Union Law which applies in many States even though it relates to a matter regarding which State Legislature cannot make laws, may confer power and impose duties or authorise the conferring of powers and imposition of duties upon the State or officers and authorities thereof.

If in carrying out the aforesaid powers and duties conferred or imposed by the Union or Parliament, the State has to bear extra expenses, the Government of India shall pay such sum to the State Government and in case of disagreement, amount shall be determined by an arbitrator appointed by the Chief Justice of India.

<sup>1</sup>[**Power of the States to entrust functions to the Union.**

**Article 258-A.**—Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which Executive Power of the State extends.]

<sup>2</sup>[**Article 259. Armed forces in States in Part B of the First Schedule—\* \* \*].**

1. Note.—Article 258-A is inserted by the Constitution (Seventh Amendment) Act, 1956.

2. Omitted by *ibid.*



**Jurisdiction of the Union in relation to territories outside India. Article 260.**—"The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any Executive, Legislative or Judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force."

This Article gives the Union Government power to assume the administration of Executive, Legislative or Judicial functions in respect of any territory outside India by the agreement with that State but every such agreement is subject to any law made by the Parliament in respect of exercise of foreign jurisdiction under Entry 16 of List I.

**Public acts, records and judicial proceedings. Article 261.**—" (1) Full faith and credit shall be given throughout the territory of India to public Acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in Clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by Civil Courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law."

This Article guarantees that all public acts, records and judicial proceedings of the Union and of every State shall be accepted with full faith and credit throughout the country. It is a rule of evidence, and the mode of proving such acts, records and proceedings and the effect thereof is to be determined by a law made by the Parliament. Final judgment or order of a Civil Court anywhere in India is to be executed



in any part of the country according to law. No State can question the validity of such Judgment or orders.

### **Disputes relating to Waters**

**Adjudication of disputes relating to waters of inter-State rivers or river valleys. Article 262.**—“(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in Clause (1).”

This Article provides for adjudication of disputes relating to inter-State river or river valley and leaves it to the Parliament to make law for resolving such disputes by means of extra-judicial bodies. It gives the Parliament powers even to abrogate the power of the Supreme Court or any other court to exercise jurisdiction in respect of such dispute. Such a provision was necessary for determining the disputes of States in the interest of consolidation and joint action.

### **Co-ordination between States**

**Provisions with respect to an Inter-State Council. Article 263.**—“If at any time it appears to the President that the Public interests would be served by the establishment of a Council charged with the duty of:—

- (a) inquiring into and advising upon disputes which may have arisen between States ;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest ; or

- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure."

This Article makes provision for the establishment of an inter-State Council for the purpose of the co-ordination and settlement of disputes. This Council is to be formed by the President who has to define the nature of its duties, organization and procedure. Australian Constitution also makes provision for such a Commission. The President of the United States of America had also created Inter-State Power Commission under the Inter-State Commerce Act, 1887. Under its commerce powers the functions of inter-State Council in the Indian Constitution are complimentary to the provisions contained in Article 252 providing for Union Legislation on inter-State matters by consent of States. Thus the Constitution of India while recognising the autonomous status of its Constituent units establishes an effective administrative control by the Union over States. It is essential for the sake of safety and peace of the country ; by this process uniformity and co-ordination in matters of common interest can be established and disputes between various units amicably settled and causes of friction and misunderstanding amicably removed. Such relationship and material adjustment is but necessary in the present day World and for the purpose of establishing Socialist society throughout this vast land.

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## PART XII

### FINANCE, PROPERTY, CONTRACTS AND SUITS.

#### CHAPTER I

##### Finance

**General.**—Stability of modern State depends upon its financial resources and its distribution in a Federal Constitution. This aspect of the problem becomes much more complicated as it requires distribution among the federative Units and the Centre. A proper adjustment is very essential for proper working of a Federal Constitution. Finance is the life-blood of the modern State ; on it depends the success or failure of the Government. In a Federation the sources of revenue have got to be allocated between the Federation and the Units because each must be given power to raise separate revenues independently of the other. The basis of this principle is the sovereign character of federative Units within their respective spheres and by distribution of the finances this independence is maintained in the Constitution. Under our Constitution the sources of revenue are divided between the national Government and the States so that each may command its sources for supplying its own wants. The distribution of powers and functions is accompanied by distribution of sources to discharge those powers and functions. The aforesaid principles cannot be strictly followed by any Federal Constitution as economic and financial position necessitates modification in the interest of the country as a whole as well as the States in case of backward States with undeveloped economy. The Centre has to come to their rescue and give financial aid until they are able to stand on their own legs. There may be States with surplus revenues whereas there may be others with deficit revenues. In such cases proper adjustment and allocation by the Centre from time to time becomes absolutely essential. Therefore, in our Constitution also there had to be provisions of this kind. In none of the Federations of the World there is clear cut division of the resources of revenue between the Federation and the States. In

the United States of America, the Federal Government has power to levy and collect taxes, duties, imports and excises to pay the debts and provide for the common defence and general welfare of the United States. In Canada the Centre has the power to raise money by any mode or system of taxation and to borrow money on public credit. In Australia the Centre and the States have concurrent powers of taxation except that the imposition of duties of customs and excise belongs exclusively to the Commonwealth.

The problem of the finance in a Federal Constitution is to secure adequate resources to the Federation as well as the States, so that they may discharge their functions and exercise their powers efficiently. In our country this problem was much more complicated than in other countries on account of our peculiar economic conditions and also a backward status of several States and Areas.

On account of the difficult economic situation of the country and the unstable condition prevailing in 1948 the committee appointed for drafting our Constitution advised the Constituent Assembly that the existing distribution of the sources of revenue under the Government of India Act, 1935 should be continued for next five years, after which a Finance Commission may review the whole situation in the light of the Statistical data which may be collected, compiled and maintained by the Government. This advice was accepted by the Constituent Assembly, and existing distribution of sources of revenue under the Government of India Act, 1935 is allowed to continue in view of the past economy of our country and the background of the distribution of the sources of the revenue, the growing financial requirements of the Union and the States on account of contemplated activities of the various Governments, and the need for a planned economy in the whole country. It was politic as well as essential that the provisions of the Constitution relating to the relation between the Union and the States in the sphere of taxation and finance may not be finalised until the problem of the whole country was carefully studied and examined in the light of the future needs as well as the potential resources of revenues of both the Union and the State Govern-

ments. With this end in view the Constitution has only specified certain taxes as matters of Union Legislation and certain taxes as matters of State Legislation, in the Union and the State Legislative lists respectively. Only an outline of this scheme of distribution is provided in the Constitution and it is subject to revision by the Finance Commission at stated intervals, thus adding elasticity to the financial position in the Constitution.

The provisions in this part relating to finances are determined by two main criteria, namely, what will secure efficient administration and what will provide for the social needs of the people; the local needs and interests in our own country require special treatment and this vast country with its size and its multiple people cannot be ruled on unitary basis. Over-centralization leads to *anaemia* at the extremities and the *apoplexy* at the Centre. This has been avoided in our Constitution. There has been an attempt to achieve unity in essential matters but the Constitution guards against *fissiparous* and disintegrative tendencies, which is essential for maintaining national unity. State Governments have been provided with financial position which will meet their needs, material or cultural and they are in a position to supply them to their citizens without looking towards the Union Government. At the same time the economic forces and the strategic considerations today tend to invest the Centre with large powers. If we want to organise economic development and social welfare as people organize for war, then the State of the future will have to be a positive State, it will have to be a social service State. It will require large finances and more or less homogeneous economic conditions will have to be maintained in order to achieve these purposes. Taxes which can be raised by Parliament and by State Legislatures are separately given in the Union Legislative list and State Legislative list. Apart from these Legislative lists there are some other provisions also in the Constitution which authorise imposition of taxes. There are no heads of revenue which are matters for legislation in the Concurrent Legislative lists. There are some duties which are levied by the Union but collected and appropriated by the State. This is done for the sake of providing uniformity. There are other taxes which are levied and collected by the Union but the net proceeds are handed over to the

State. There are several provisions for the levying of taxes which are collected by the Union and distributed between the Union and the State. Provision also exists for levying surcharge for the purpose of the Union and certain taxes whose proceeds are so distributed. The whole proceeds of such surcharge form part of the Consolidated Fund of India. The Constitution also contains provisions for levying Union duties of excise other than those given in the Union list, and for distributing their proceeds between the Union and the State. There are certain provisions for grant of revenue from the Union to certain States. This in short is the scheme of financial resources of the country.

<sup>1</sup>[**Interpretation. Article 264.**—"In this Part "Finance Commission" means a Finance Commission constituted under Article 280."

The latest safeguard of democracy lies in the power of taxation by the people's representatives alone, and not by the Executive head of the State. This is the most essential principle of democratic finance. Article 265 provides, "no tax shall be levied or collected except by authority of law." This Article embodies the English principle of "no taxation without representation." The Government of India Act, 1935 did not contain any such provision. The tax should not only be levied but also collection of tax must be under the authority of some law. Such provisions are provided by Articles 110, 117, 199, 203, 207 and 313 in this Constitution. It cannot be done by mere resolutions of the Houses of the Legislatures or any executive action.

The aforesaid principle that the Crown has no power to tax except by grant of Parliament originated in the demand of Magna Carta (1215) in England ;

"No scutage or aid to be levied without the consent of the *commune concilium* excepting the three customary feudal aids."

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1. Substituted by the Constitution (Seventh Amendment) Act, 1956, Section 29.



This was affirmed and finally established by the Bill of Rights in 1689 after the Glorious Revolution in England, which is in the following words :

“Levying money for the use of the Crown by pretence of prerogative without grant of Parliament is illegal.”

By this principle Parliamentary Government was established in England because the King was always forced to summon the Parliament in order to get supplies. This is also the reason why most of the taxes are voted from year to year and not permanently. The Courts of Law as the guardian of democracy very zealously guard this principle and do not infer the grant of power to tax from any legislation in the absence of clear expression.<sup>1</sup> The phrase, “No taxation without representation” summarises the dispute which led to the war of American Independence in 1775.

The Consolidated Fund is the foundation stone of the system of the Parliamentary supervision and control over the finances in England. The Australian Constitution also provides for Consolidated Fund, *vide* Sections 81 and 82. In our Constitution the Union as well as each State shall have Consolidated Fund following the English precedent. All the sources of the Union as specified in Clause (1) of Article 266 are to be placed into this reservoir, that is the Consolidated Fund of India. And the sources of the State are to be placed into a similar fund known as the Consolidated Fund of that State. No money can be issued out of this Fund except in accordance with the valid law of the Legislature. The Government of India Act, 1935, had no provision for Consolidated Fund.

**Consolidated Funds and public accounts of India and of the States. :Article 266.**—“(1) Subject to the provisions of Article 267 and to the provisions of this Chapter with

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1. *Att. General v. Wits United Dairy Co.* (1922) 91 L. J. K. B. 897.



respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India," and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances of and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State."

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

In a modern State unexpected demands on its exchequer are very common, and the Constitutions therefore make a provision for contingency funds. No money can be issued out of the Consolidated Fund without the previous authority of an Act of Parliament or State, such as a Consolidated Fund Act or the Appropriation Act; the Contingencies Fund is available to the executive from which it may meet unexpected demands for expenditure in anticipation of Parliamentary sanction. The Contingency Fund under our Constitution is provided by Article 267. It is to be established by law by the Parliament and it is to be known as the Contingency Fund of India into which shall be paid from time to time such sums as may be determined by law. It is placed at the disposal of the President to enable advances to be made out of such Fund for purposes of meeting aforesaid expenditure, pending authorisation by Parliament by law under Article 115 or 116. Similar Contingency Fund known as the Contingency Fund of State is to be

established by a State by the Legislature of the State. It is to be placed at the disposal of the Governor to enable advances to be made by him out of such Fund for unforeseen expenditure pending authorisation by the State Legislature by law under Article 215 or 216.

**Distribution of Revenues between the Union and the States.**—The heads of taxes and the respective powers of the Union and the State Governments with respect to raising money by taxes are provided in the Constitution. Items 82 and 92 in the Union List give power to the Union Government to raise money by taxes while Items 45 to 63 in the State List give similar power to the State Government. Some of the taxes in the Union List are to be levied by the Union Government for the sake of uniformity but their net proceeds are handed over to the States. There are other taxes in the Union List which are levied and collected by the Union but their net proceeds are shared between the Union and the States.

Article 268 provides for the duties levied by the Union but collected and appropriated by the States. Excise duties and Stamp duties specified in Entries 84 and 91 of the Union List will be levied by the Union Government. But the States collect these taxes within their boundaries and appropriate the net proceeds thereof. In Union territories, however, and other territories, it is the Union which would collect these taxes and also appropriate net proceeds. The net proceeds of any such duties leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

Article 269 provides for taxes levied and collected by the Union but assigned to the State. These taxes are :—

- (a) duties in respect of succession to property other than agricultural land ;
- (b) estate duty in respect of property other than agricultural land ;
- (c) terminal taxes on goods or passengers carried by railway, sea or air ;

- (d) taxes on railway fares and freights;
- (e) taxes other than stamp duties on transactions in stock-exchanges and future markets;
- (f) taxes on the sale or purchase of newspapers and on advertisements published therein;
- (g) taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce.

The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Union territories shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

The Government of India is authorised by Article 270 to levy and collect taxes on income other than agricultural income and excluding a corporation tax, but its proceeds are to be distributed between the Union and the States in the following manner:—  
“Such percentage as may be prescribed of the net proceeds of any financial year of any such tax except so far as those proceeds represent proceeds attributable to Union territories or the taxes payable in respect of Union emoluments is not to form the part of the Consolidated Fund of India, but is to be assigned to the States within which that tax is leviable in that year, and is to be distributed among those States in such manner and from such time as may be prescribed. In each financial year such percentage as may be prescribed of such of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of the Union emoluments is to be deemed to represent proceeds attributable to Union territories. “Prescribed” means (i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission. "Union emoluments" include all emoluments and pensions payable out of the Consolidated Fund of India in respect of which income tax is chargeable.

By Article 271 the Union Parliament is empowered to levy surcharge on the duties and the taxes referred to in Articles 269 and 270 for the purposes of this Union and the whole proceeds of such surcharge shall be appropriated by the Union and shall form part of the Consolidated Fund of India.

According to Article 272 Union duties of excise provided in the Union List except those on medicinal and toilet preparations shall be levied and collected by the Government of India, but the Parliament may by law provide that there shall be made out of the Consolidated Fund of India to the States to which the law imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty and those sums shall be distributed among those States in accordance with such principles as may be formulated by such law.

Under our Constitution the State shall have no share in the export and import duties which belong to the Central Government. Before this Constitution under section 140 of the Government of India Act of 1935 the provinces were entitled to share in the proceeds of the export duty on jute. In order to avoid difficulties in the budget of States due to sudden withdrawal of this source, Article 273 provides that for a period of ten years from the commencement of this Constitution, jute growing States of West Bengal, Bihar and Assam and Orissa will receive grants-in-aid from the Government of India in lieu of the above share of jute export duties to the extent of such sums as the President may prescribe; the payment to the State may determine if no export duty on jute or jute products is levied by the Government of India.

Article 274 provides for prior recommendation of the President of India to Bills affecting taxation in which States are interested. The Article requires that Bills having the following

objects shall not be introduced in Parliament without the previous recommendation of the President of India :—

- (i) imposing or varying any tax or duty, the proceeds of which are wholly or partly assigned to the States (Cl. (2) (a) of this Article) or the duties mentioned in Article 273 (b) ;
- (ii) varying the definition of “agricultural income” in the Enactments relating to Indian Income Tax (*e.g.*, in Section. 2 (1) of the Indian Income Tax Act (XI of 1932) ;
- (iii) affecting the principles on which moneys are or may be distributable to the States, under Articles 270, 272 ;
- (iv) imposing any such surcharge, under Article 217.

In our Constitution there are many exceptions to the general rule of Federal Finance so that both the Union Government and the State Government ought to be strictly independent of each other with regard to their financial resources in the aforesaid provision. These exceptions were laid down to certain extent. Such exceptions exist almost in all the Modern Constitutions of the World. Division of the taxes between the State and the Federal Government has almost become a universal rule.

A Federal Government is always in a position to command financial resources far better than those of the federating units, and at the same time there may be certain States and areas which require development which cannot be done without foreign assistance. Even in Canada and Australia, the Constitution-makers relying on past experience were forced to make provisions in this respect. In these days of central overall planning, and for the requirements of co-ordination and progress of our country, our Constitution-makers also realised the necessity of making provisions by which the Central Government may come to the rescue of the States acting in the spirit of the guardian and protector.

Article 275 of our Constitution provides that the Parliament by law may give grants-in-aid from the Consolidated Fund of India to such States as it may determine to be in real and pressing need.

Article 275 of our Constitution provides that the Parliament by law may give grants-in-aid from the Consolidated Fund of India to such States as it may determine to be in real and pressing need of such capital and recurring sum as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State. Secondly, this Article also makes special provisions for grants-in-aid out of the Consolidated Fund of India to the State of Assam, sums, capital and recurring, equivalent to the average excess of expenditure over the revenues during the two years immediately preceding the commencement of the Constitution in respect of the administration of the Tribal Areas specified in Part A of the table, Appendix 2, paragraph 20 of the Sixth Schedule, and the costs of schemes of development undertaken by that State with the approval of the Government of India for raising the level of the administration of the Tribal Areas to that of the administration of the other part of the State.

Until the Parliament makes provision in respect of the aforesaid matters, the President may exercise these powers by order and any order made by the President shall have effect subject to the provisions made by the Parliament. After the Constitution of the Finance Commission all orders to be made by the President shall be made after considering the recommendations of the Finance Commission; by this Article the Government of India has made itself partly responsible for the welfare of the Tribal Areas and Scheduled Areas and for raising the level of administration of those Areas. Without such help, progress in those Areas would have been very slow if not impossible.

The Constitution has conferred powers on the State Legislatures to levy taxes on professions, trades, callings and employments in order to avoid conflict with the powers of Parliament. Article 276 strictly provides that notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes

for the benefit of the State or of a Municipality, District Board, Local Board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income. But limit has been placed on the amount to be realised, and the total amount payable in respect of any one person to the State or to any Municipality, District Board, Local Board, or other local authority in the State by way of taxes, professions, trades, callings and employments shall not exceed Rs. 250 per annum. If in the Financial year preceding the commencement of the Constitution there was in force in any State or such Municipality, Board or authority such a tax, the rate or the maximum rate of which not exceeding Rs. 250 rupees per annum, such tax may continue to be levied until the provision to the contrary is made by the Parliament, either generally or in relation to any specific, State Municipality or Board or authority.

In spite of conferring power on the State Legislature to make laws as aforesaid the power of the Parliament to make laws with respect to the taxes on income, accruing from or arising out of professions, trades, callings and employments shall remain unlimited.

**Article 277 provides for existing taxes.**—"Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, Municipality, District or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."\*

Articles 279, 280 and 281 providing for calculation of net proceeds and Constitution of Finance Commission are mentioned below :—

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\*Note.—Article 278 dealing with Agreements with States in Part B of the First Schedule with regard to financial matter is omitted by the Constitution (Seventh Amendment) Act, 1956.



**Calculation of "net proceeds etc.", Article 279.**—(1) In the foregoing provisions of the Chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax and duty, in or attributable to any area shall be as ascertained and certified by the Comptroller and Auditor-General of India whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

**Finance Commission, (Article 280.)**—(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be divided between them under this chapter and the allocation between the States of the respective shares of such proceeds ;
- (b) The principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India ;

[(c) any other matter referred to the Commission by the President in the interests of sound finance.]

(4) The commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

**Recommendations of the Finance Commission.** (Article 281.)—The President shall cause every recommendation made by the Finance Commission under the provisions of the Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

**Miscellaneous Financial Provisions.**—The Union or a State may make any grant for any public purpose. Even though it is not within its Legislative competence. (Article 282).

Article 283, dealing with custody etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts provides as follows :—

(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds, received by or on behalf of the Government of India; their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, withdrawal of money therefrom, the custody of public moneys other than those

credited to such Funds received by or on behalf of the Government of the State, their payment into public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by the law made by the Legislature of the State, and until provision in that behalf is so made shall be regulated by rules made by the Governor of the State."

The object of the Article 283 is to place the custody as well as payment of all public moneys under the control of a Legislature. This is done with a view to regularising the receipt of money and to prevent any department making money on its own accounts. Another object is to ensure that no Government Officer can keep sums of money in his custody.

Article 284 provides that no public officer shall keep in his custody any money collected by him or deposited with him as an officer of the Union or the State and he is required to pay the same into the Public Account of India or the Public Account of the State.

The State or any authority within the State cannot levy taxes on the property of the Union unless the Parliament by law provides otherwise. But any such property which was immediately before the commencement of the Constitution liable or treated as liable as to any such tax continues to be liable unless otherwise provided by an Act of the Parliament. The Article 285 grants immunity of a property of one Government from taxation by the other.

Article 286 places restrictions upon imposition of Sales Tax by a State. It may be noted that the power to impose taxes on 'sale or purchase of goods other than newspapers' belongs to the State (Entry 54 List II) but 'taxes on imports and exports' (Entry 83 List I) and inter-State trade and commerce (Entry 42, List I) are exclusive Union subjects. Article 286 is intended to ensure that sales taxes imposed by the State do not interfere with imports and exports and inter State trade and commerce, which are matters of national concern, and are beyond the competence of the State. Hence, the present

Article lays down certain limitations upon the power of the States to enact sales-tax legislation.

Clause 1 of Article 286 lays down the principle that a State cannot impose taxes on sales outside the States or taxes on imports and exports. The taxing jurisdiction of a State is limited to transactions within the State. Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1). Any law of a State shall in so far as it imposes or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-state trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

(1) No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

Article 287 provides for exemption from States taxes on electricity consumed by the Government of India or by a Railway Company. Articles 287 and 288 constitute partial importations of the doctrine of the Unity of Instrumentalities in relation to the Union, as it exists in the Constitution of the United States of America. They ensure immunities of certain functions carried on by the Union as distinguished from property under Entries 53 and 54 of List II; the State Legislature has power to impose taxes on the consumption or sale of electricity, and taxes on the sale or purchase of goods other than newspapers, but railways and inter-State rivers and river valleys are Union subjects under Entry 22 and Entry 56 respectively of List I. The aforesaid provision in Article 287 may be relaxed by Union Legislation permitting taxes on electricity consumed by Government of India or the Railways. But in such a case the law imposing or authorising the tax shall secure that the price of such electricity sold to the Government of India for consumption for itself or by the Railways shall be less than that charged from other customers, by the amount of that tax. Thus the law imposing the tax will have to provide that

the incidents of the tax shall be upon the producer of the electricity and not upon the Government of India or the Railway as consumer.

Article 288 provides for exemption of taxes by States in respect of water or electricity restored, generated consumed, distributed or sold by any authority established by any existing law or any law made by the Parliament for regulating or developing any inter-State river or river valley. But the States may impose such taxes as were levied immediately before the commencement of this Constitution if the President authorises it by an order.

Further taxation in respect of the aforesaid concerns by the States is also made subject to President's assent to such legislation by the State. The President's assent is to be obtained in respect of fixation of the rates and other incidents of such taxes by means of rules or orders to be made under law by any authority.

Article 289 provides for exemption of the property and income of a State from Union taxation but the income arising from any trade or business carried on by or on behalf of the Government of a State or any operations connected therewith or any property used or occupied for the purposes of such trade or business or any income accruing or arising in connection with it is not exempted from Legislation for taxation by the Union. Thus exemption is confined to Governmental functions and not trading or commercial functions of the State Government, for example, the lighting of the streets, supply of electricity, sale of liquor; however, the Parliament may by law declare that any trade or business or any class of trade or business is incidental to ordinary functions of the Government, and then such trade or business shall be exempt from Union taxes.

Article 290 provides for adjustment of expenses by agreement or arbitration for being shared between the Union and the States or the States-inter-se. Article 290 is as follows :—

“Where under the provisions of this Constitution the expenses of any Court or Commission, or the pension payable to or in respect of a person who has served before the Commencement of this Constitution under the Crown in India or after such commencement in connection with

the affairs of the Union or of a State are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

- (a) in the case of a charge on the Consolidated Fund of India, the Court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State ; or
- (b) in the case of a charge on the Consolidated Fund of a State, the Court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State ;

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.”

The accession of the Princely States to the Union of India, and the surrender by the Rulers of their ruling powers as well as the integration and merger of the States, were all voluntary acts. In consideration of such surrender, all the agreements of merger and covenants for formation of the Unions of States fixed a certain sum as the Ruler's Privy Purse intended to cover all the expenses of the Ruler and his family.

<sup>1</sup>[Article 290-A.—Annual payment to certain Dewaswom Funds], are provided by this Article.

Article 291 of the Constitution provides the constitutional guarantee for the payment of the sums as Privy Purse fixed by the Agreements and Covenants ; it provides as follows :—

“Where under any covenant or agreement entered into by the Ruler of any Indian State before the Commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse.

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1. Added by the Constitution (Seventh Amendment) Act, 1956, Section 19

- (a) such sums shall be charged on, and paid out of the Consolidated Fund of India ; and
- (b) the sums so paid to any Ruler shall be exempt from all taxes on income.

## CHAPTER II

### Borrowing

In modern States borrowing plays a very important role in public finance. No State can manage to raise all the money it requires for the nation building activities by means of taxation and a country like India needs it much more. In our Constitution, Articles 292 and 293 make provisions for borrowing by the Union and State Governments. While the Union can borrow outside India, the States can borrow within India only. The States cannot enter into the International Money market. The Executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India and to the giving of guarantees within such limits as may be fixed. (Article 292).

The Executive power of a State extends to borrowing within India upon the security of the Consolidated Fund of the state within limits fixed by the Legislature of such State and to the giving of guarantees within such limits as may be so fixed. [Article 293(1) ].

The Government of India may make loans to any State or give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India. [Article 293(2) ].

A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India, or by its predecessor Government or in respect of which a guarantee has been given by the Government of India. [Article 293(3) ].

## CHAPTER III

### Property, Contracts, Rights Liabilities, Obligations and Suits

**Succession**—Article 294 provides for succession to property assets, rights, liabilities and obligations, in favour of the Union



and the States. This Article, in short, means that all property, assets, rights and liabilities that belonged to the Dominion of India or a Governor's Province at the commencement of the Constitution shall be transferred by succession to the Union or the corresponding State under the Constitution. The aforesaid rule is subject to any adjustment, made or to be made by reason of the creation, before the commencement of this Constitution, of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab. Article 294 is as follows:—

**“Succession to property, assets, rights, liabilities and obligations in certain cases.**—As from the commencement of this Constitution:—

- (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and
- (b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal and East Bengal, West Punjab and East Punjab.”

Article 295 deals with succession to the Property, assets, rights, liabilities and obligations, which were held by the Indian States in Part B of the First Schedule. The provisions for succession are subject to agreement between the Government of India and the Government of such a State.

Article 295 provides as follows :—

- (a) all property and assets, which immediately before such commencement were vested in any Indian States corresponding to a State specified in Part B of the First Schedule shall vest in the Union if the purposes for which such property and assets were held immediately before such commencement, will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and
- (b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities and obligations were incurred before such commencement, will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1)."

**Escheat or Lapse or Bona vacantia.**—According to Article 296 any property in India which, if this Constitution had not come into operation, would have accrued to His Majesty or to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall in any other case vest in the Union; but any property which, at the date when it

would have so accured to His Majesty or to the Ruler of an Indian State, was in possession or under the Control of the Government of India or the Government of a State, shall, according as the purposes for which it was then used or held were purposes of the Union or of a States, vest in the Union or in that State.

**Things of value within Territorial Waters.**—All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union. [Article 297].

**Power to acquire Property.**—The Executive power of the Union and of each State shall extend to the carrying out of any trade or business and to the acquisition, holding, and disposal of property and the making of contracts for any purpose. [Article 298].

**Contracts.**—Article 299 lays down how contracts by the Union and the State shall be made and executed and it grants personal immunities to officers for Government contracts. This Article exempts officers as well as Executive heads from personal liabilities for contracts made and executed on behalf of the President of India or the Governor for the purposes of this Constitution or for the purposes of any enactment relating to the Government of India hereto-after in force. This Article does not contain, complete immunity; hence in case of excess of jurisdiction where the purpose for which contract was made is not within the purposes of this Constitution, an officer will be personally liable, notwithstanding the *bona fides* of his intention. This Article provides as follows :—

“(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contract and all assurances of property made in the exercise of the power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof."

**Suits and Proceedings.—(Article 300.)**—"The Government of India may sue or be sued by the name of Union of India and the Government of State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of power conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution :—

- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings ; and
- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings."

The aforesaid Article provides that the Union of India and the Government of States shall be juristic personalities for the purposes of suits or proceedings, in the same way as the secretary of State in Council was, prior to the Government of India Act, 1935. While Article 132 provides the principles relating to suebility of the Union and the States *inter se*, this Article lays down the rules for the stability of the Union and the States at the instance of individuals. This section is almost a reproduction of section 176 of the Government of India Act of 1935 with some alterations. In 1765 the East India Company had

acquired the Dewani from the Mughal Emperor, and from that time upto on 1858 it had a dual character, that of a trader as well as of a Sovereign. Under the Charter Act of 1833, the Company came to hold the Government of India in trust for the British Crown. In 1858 the Crown assumed sovereignty over this country and took over the Government from the hands of the East India Company. By Section 65 of the Government of India Act, 1858, the Secretary of State-in-Council was declared to be a "body corporate," for the purposes of suing and to be sued. Similar provisions were incorporated in the Government of India Act, 1915 and the Government of India Act, 1935. This provision in the Constitution was necessary because the Constitution has provided that the contractual liability of the State, subject to statutory conditions or limits, is the same as that of an individual under the ordinary law of contract; the Government is liable for all unlawful acts which are not strictly "Sovereign."

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## PART XIII

### TRADE, COMMERCE, AND INTER-COURSE WITHIN THE TERRITORY OF INDIA

**General.**—In a modern welfare State whose activities embrace almost every walk of man's life and the hands of the government are visible in all the economic spheres of the society, special provisions in a Federal Constitution are absolutely necessary. They are still more important because the Federal Constitution has to prevent the growth of sectional and local interests which are enmical to the interests of the nation as a whole. In order to achieve the strength of the Union inter-State barriers are to be minimised so that the entire people may feel that they are the members of the nation in spite of geographical divisions of the country. This object can be achieved by guaranteeing to every citizen the freedom to move throughout the country without unnecessary restrictions, and the freedom to reside and settle in any part of the territory of the Union. In order to constitute an organic homogeneity and real unity in the country it is absolutely necessary that freedom of trade, commerce and inter-course should be maintained. Even from the point of view of the independence of the country, such unity is absolutely essential; the importance of the freedom of every citizen to trade with any part of the country is explained by the Privy Council<sup>1</sup> as follows :—

“The idea starts with the admitted fact that Federation in Australia was intended (*inter alia*) to abolish the frontiers between different States and create one Australia. That conception involved freedom from customs duties, imports, border prohibitions and restrictions of every kind; the people of Australia were to be free to trade with each other, and to pass to and fro among the States, without any burden, hindrance or restriction based merely

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1. *James vs. Commonwealth of Australia*, (1936) A. C. 578 (360).



on the fact that they were not members of the same State".

Almost all the modern Constitutions of the World have made provisions similar to those contained in our Constitution in order to achieve the aforesaid objects. In the Australian Constitution, Section 92 says :—

"On the imposition of uniform duties of customs, trade, commerce and inter-course among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free".

Section 121 of the British North America Act has provided ;

"All articles of the growth, produce or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces".

In section 136 of the South African Constitution Act also it is provided.

"There shall be free trade throughout the Union."

The Article 18 of the Constitution of Burma, 1948, provides :—

"Subject to regulation by the law of the Union trade, commerce and inter-course among the units shall be free.

Provided that any unit may by law impose reasonable restrictions in the interests of public order, morality, health or safety."

The Constitution of the United States of America has no express provision of this nature, but the Congress is empowered to "regulate commerce among the several States by Article 1, section 8(3), and it is judicially interpreted that this power of the Congress to regulate inter-State commerce is plenary and exclusive, so that the silence of Congress in any particular respect upon this matter implies that in such respect, the matter is to be free from regulations or restraint by the States."<sup>1</sup>

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1. Welton vs Missouri, 91 U. S. 275 (282).



**Freedom of trade, commerce and inter-course.**—Our Constitution lays down in Article 301 the general rule that trade, commerce and inter-course throughout the territory of India shall be free "subject to the other provisions of Part XIII of the Constitution." Articles 302 to 306 provide exception to this general rule. In the Constitution of the United States of America the only word used is commerce and the duty to regulate commerce is vested in the Federation by Article 1, Section (8) (3). The word, 'commerce' there has been interpreted to include all forms of transportation by land, air or water, over the telegraph, telephone or wireless and every negotiations, contract, trade, and dealings with the citizens causing such transportations; the commodities transported may be either tangible or intangible such as telephonic message.<sup>1</sup> Importation of the 'commodities for personal consumption is also commerce. What is essential for the commerce is transmission. In the American sense commerce includes trade also and it is very nearly identified with inter-course<sup>2</sup>; the America view is summed up as follows:—

"Not only, then, may transaction be commerce though non-commercial, they may be commerce though illegal and sporadic, and though they do not utilize common carriers or concern the flow of anything more tangible than electrons or information."

Section 92 of the Commonwealth of Australia Act also makes provision for freedom of trade, commerce, and inter-course. Similarly, the Canadian Constitution also guarantees freedom of trade, from one State to another. The freedom of inter-State trade and commerce in our Constitution means that no State shall either directly or indirectly impose a restriction upon trade and commerce as between itself and another.

**Restrictions on Freedom of Trade.**—The freedom of trade, commerce and inter-course guaranteed by Article 301 in our Constitution is subject to restriction in the public interests made by the Parliament as well as by the State Legislatures within limits defined by Articles 301 to 306. Article 302 provides

1. *Pensacola Telegraph Company vs. W. U. Telegraph Company*, (1877) 96 U. S. 1.

2. *U. S. vs. S. E. Under Writer's Association*, (1944) 322 U. S. 533.

that Parliament may by law impose such restrictions on the freedom of trade, commerce, or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. But according to Article 303 neither Parliament nor the Legislature of a State shall have power to make any law giving any preference to one State over another, or making any discrimination between one State and another. However, for the purpose of dealing with a situation arising from scarcity of goods in any part of the country, the Parliament can make law giving any preference to one State over another or making any discrimination between one State and another. Articles, 301, 302 and 303 are as follows :—

**Article 301. Freedom of trade, commerce and intercourse.**—Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free.

**Article 302. Power of Parliament to impose restriction on trade, commerce and intercourse.**—Parliament may by law impose such restrictions on freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

**Article 303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.**—(1) Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving or authorising the giving of, any preference or making or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Article 304 provides for restrictions on trade, commerce and intercourse among the States, and to be imposed by the Legislatures of the States, and it may impose on goods imported from other States any tax which it has imposed on similar goods manufactured or produced in that State and it may also impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State in the public interest. However, no Bill for this purpose shall be introduced or moved in a State Legislature without the previous sanction of the President. Such public interests as aforesaid are generally the interest of health, morality, safety and the life of the people. Article 304 is in the following words :—

“Notwithstanding anything in Article 301 or Article 303 the Legislature of a State may by law :—

- (a) impose on goods imported from other States [or the Union territories] any tax to which similar goods manufactured or produced in that State or subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced ; and
- (b) impose such reasonable restriction on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :—

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.”

**Saving of Existing Laws.**—Article 305 saves the existing laws from the effect of the provisions of this Part except so far as the President may by order otherwise provide. This Article is in the following words :—

“Nothing in Articles 301 and 303 shall affect the provisions of any existing laws except in so far as the President may by order otherwise provide.”

**Appointment of Authority.**—In order to enforce the rights declared by Articles 301 to 304 a machinery provided by

Article 307; this Article authorises the Parliament to establish by law an authority similar to the inter-State commerce commission of the U. S. A. The Parliament is to confer on this authority such powers and duties as it thinks necessary.

Although it is well recognised principle that trade and commerce should be free from restrictions imposed by States, some local control is also very necessary in order to safeguard the particular interest of each State. The reasonable restrictions sought to be imposed by States authorised by the provisions in Article 304 are based on the principles enunciated in the American Doctrine of the "Police Power of the States." This principle is that freedom declared in Article 30 cannot prevent a State from taking measures to prevent the intrusion from outside a State of such persons and goods as may become dangerous to its domestic peace, order, safety, health or morals. This clause is undoubtedly very wide and all comprehensive in its scope and may very often exempt the State Legislation from prohibition against preference and discrimination contained in Article 303. The only limitation on the exercise of this power is that restrictions must be "required in the public interest," and the Bill or amendment must have the previous sanction of the President, these are the two valuable checks which can save the freedom from becoming illusory. It also gives the power to the Court to determine what restrictions imposed by State Legislatures should be held as valid. In case of restrictions to be imposed by the Parliament under Article 302, the word "restrictions" is not preceded by the word "reasonable," and therefore the Court has no power to scrutinise the Parliamentary Legislation; under the Constitution of the United States of America also, the power of direct regulation of inter-State commerce is an exclusive federal subject, but the State has its "Police Power" also and it can exercise it even though it might incidentally affect inter-State commerce, *e.g.*, legislation regarding impure, diseased or tainted goods, which are extra-commercium.

## PART XIV

### SERVICES UNDER THE UNION AND THE STATES

#### CHAPTER I

**Services.**—The system of responsible government in a country for its successful practical working requires the existence of a competent and independent civil service capable of giving to successive Ministers advice based on long administrative experience, secure in their positions during good behaviour but required to carry out the policy upon which the Government and the Legislature eventually decide. This can be secured only if the method of recruitment be such as to secure a continuous flow of competent men and at the same time the conditions of service must be such as to secure tenure, salary, and regularity of promotion. Although the Constitution does not provide in detail provisions with regard to conditions of service and recruitment which are left to be regulated by Acts of appropriate Legislatures, yet it contains some important fundamental provisions which guarantee security and safeguard its position against the vagaries of the Executive.

**Recruitment and tenure of Office.**— In this Part the expression "State" [does not include the State of Jammu and Kashmir]. The appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State, subject to the provisions of the Constitution. The President (in the case of services and posts in connection with the affairs of the Union) and the Governor of a State (in the case of services and posts in connection with the affairs of the State) may make rules for such services and posts unless the Legislatures legislate on the subject. Every member of defence service or civil service of the Union or an all India service, and every member of a State services holds office during the pleasure of the President, or the Governor; persons in Government service (other than those enumerated above) may be given compensation if the post is

abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post. The power of appointment and dismissal belonging to the Executive is subject to legislative control.

**Recruitment and conditions of service of persons serving the Union or a State "Article 309.**—Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State :

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor [\* \* \*] of a State of such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

Article 310 provides for tenure of office of persons serving the Union or a State and is stated below :—

"(1) Except as expressly provided by the Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a Civil Service of a State or holds any civil post under a State holds office during the pleasure of the Governor [\* \* \*] of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or the Governor [\* \* \*] of the State, any contract under which a person, not being a



member of a defence service or of an All India service or of a Civil Service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, [\*\*\*] as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

While under Article 310 all services under the Union or the States shall be at the pleasure of the President or the Governor, Article 311 lays down conditions under which that pleasure may be exercised in respect of civil affairs. Thus security to some extent is provided against absolute arbitrary action, and a fundamental procedure for dismissal, removal or reduction in rank of civil servants under the Union or a State is prescribed. No person holding office under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed, nor shall such person be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him except (i) when he is so reduced owing to his conviction on a criminal charge, or (ii) where it is not reasonably practicable to give to that person an opportunity, of showing cause, or (iii) where the President or the Governor is satisfied that, in the interest of the security of the State, it is not expedient to give to that person such an opportunity, and in any case if any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final. Article 311 is as follows :—

"(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.



(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :—

Provided that this clause shall not apply—

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;
- (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause ; or
- (c) where the President or Governor, [\*\*\*] as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (2) the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.”

Article 311 is a very important part of the Constitution, dealing with dismissal, removal or reduction in rank of persons employed in civil capacity under the Union or the State. ‘The reasonable opportunity of showing cause,’ clause has come up for interpretation by the Supreme Court of India and it has been held that the civil servant charged has the right to reasonable opportunity of showing cause twice before the order of dismissal, reduction in rank, or removal is to be finally passed against him. There are two stages in the proceeding under the present Article : The first being when the charges are enquired into and at this stage, the person required to meet the charges should be given a reasonable opportunity to enter into his defence ; and the second stage is when after the enquiring authority has come to its conclusions on the charges and there arises the question of the proper punishment to be awarded. A

notice has then again to be given of the proper punishment to be awarded in order to show cause against the punishment proposed. This conclusion follows from the words 'action proposed to be taken,' in the Privy Council case. [*High Commissioners vs. Lall*,<sup>1</sup> while approving *Secretary of State vs. Lall*]<sup>2</sup>, in Their Lordships' words:—

"No action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow has been provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which the present sub-section makes provision.

Their Lordships...see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry...it would not be reasonable that he should ask for repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry."

Clauses 1 and 2 of Article 311 are mandatory and provide qualifications to the power given to the executive head under Article 310. Article 311 does not in any way alter to affect the principle that a Government servant holds office at the pleasure of the President or Governor, as the case may be. Act 311 only subjects the exercise of that pleasure to the two conditions laid down in this Article which operate as provisos<sup>3</sup> to Article 310 (1). Therefore, dismissal by an authority lower in rank than the appointing authority and dismissal without giving reasonable opportunity of showing cause against the punishment proposed to be awarded are equally void and inoperative. The courts have held them actionable. In both cases of wrongful dismissal in contravention of Article 311 the remedy of a civil servant is for the declaration that the order

1. A. I. R. 1948 P. C. 121.

2. (1945) 49 C. W. N. (F. R.), 63.

3. *Parsotam v. Union of India*, A. I. R. 1958 S. C. 36.

of dismissal was void and inoperative and he remained a member of the service at the date of the suit (*High Commissioner vs. Lall*).<sup>1</sup> Now the Supreme Court of India has also held that damages as well as the arrears of pay may be recovered against the State for wrongful dismissal, removal or reduction in rank. The theory of the immunity of the Crown in England as well as under the Government of India Act 1935 is not material under the Constitution of India, though the President is personally immune from action, nothing debars action against the Government itself. The Supreme Court has followed the decision in *Punjab Province vs. Tarachand*,<sup>2</sup> because the remuneration for public service in India was not bounty of the Crown as in England. The theory of the immunity of Crown now no longer exists. Therefore, damages may be claimed for wrongful dismissal, or removal or reduction in rank against the Government, under the Constitution.

Article 311 applies in the case of permanent as well as temporary employees, and also in the case of persons holding permanent posts as well as temporary posts<sup>3</sup>. This Article applies to civil posts and not to military services.

It is open to the dismissing authority to take the assistance of some subordinate authority for making enquiry and submitting a report; provided that the ultimate responsibility for the exercise of the power to dismiss remains with the person who is entitled to dismiss.<sup>4</sup>

But the discharge of a servant in accordance with the terms of contract or conditions of service Article 311 (2) does not apply.<sup>5</sup>

If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so

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1. A. I. R. 1948 P. C. 121.

2. A. I. R. 1947 F. C. 23.

3. A. I. R. 1958 S. C. 36 *Parsotam v. Union of India*.

4. (1956) S. C. A. 79 *Pradvalh v. Chief Justice A. I. R. 1959 S.C. 512*  
*General v. State of Punjab*.

5. *Satish Anand v. Union of India*, (1953) S. C. A. 293.

to do, Parliament may by law provide for the creation of one or more all India services common to the Union and the States, and regulate the recruitment, and the conditions of service of persons appointed, to any such service. [Article 312 (1) ].

The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be service created by Parliament under this Article. [Article 312 (2) ].

Article 313 provides transitional provisions and is given below:—

“Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after commencement of this Constitution, as an all India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.”

Article 314 makes provision for the protection of existing officers, recruited by the Secretary of State, and provides as follows:—

“Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.”

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## CHAPTER II

**Public Service Commission**

There shall be a Public Service Commission for the Union and a Public Service Commission for each State. But two or more States may agree to a Joint State Public Service Commission (known as Joint Commission) to serve the needs of those States if Parliament by law so provides after a resolution to that effect is passed by the Legislatures of each such State.

The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State. [Article 315].

**Appointment.**—The provisions dealing with appointment and term of office of the Chairman and the Members of Public Service Commission are given in Article 316 which is quoted below :—

“(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State :

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

A member of a Public Service Commission shall hold office for six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission the age of sixty years.”

A member of the Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office.

**Article 317. Removal and suspension of a member or Chairman.**—The Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court (on reference being made to it by the President) has, on inquiry, reported that he should be removed. The President may, in the meanwhile suspend such member. Misbehaviour includes :—

- (i) being concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or (ii) participating in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company :

The President may of his own motion remove such chairman or member if he (a) is adjudged an insolvent ; or (b) engages during his term of office in any paid employment outside the duties of his office ; or (c) is, in the opinion of the President unfit to continue in office by reason of infirmity of mind or body.

**Regulations to conditions of service.**—These are provided by Article 318, given below :

“In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations :—

- (a) determine the number of members of the Commission and their conditions of service ; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service :



Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment."

**Prohibition against members ceasing to hold office.—**

Such prohibitions are provided in Article 319, as follows:—

On ceasing to hold office—

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State.
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State:
- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

The functions of the Public Service Commission are only advisory. Mandatory powers cannot be given to them otherwise it would be impossible for the Executive to carry on the administration efficiently. The Public Service Commission is merely to give its opinion to the President, or the Governor



while it is not obligatory on the latter to accept that opinion or recommendation. However, the provision in Article 323 that annually the President, or the Governor shall have to explain to the Legislature the reasons why in particular cases the advice of the Commission was not accepted, is a safeguard against arbitrary action of the Executive. Further Clause (5) of Article 320 also provides safeguard that the President or the Governor although has a power to make regulations withdrawing particular matters or classes of cases from the purview of the Public Service Commission, has to place such regulations before the Legislatures and shall be subject to the Legislative Control and modifications.

Article 321, giving power to extend functions of the Public Service Commissions, is as follows :—

“An Act made by Parliament or, as the case may be, the Legislature of a State, may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the Services of the Union or the State and also as respects the Services of any local authority or other body corporate constituted by law or of any public institution.”

Expenses of Public Service Commissions are given in Article 322 in the following words :—

“The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.”

Article 323, deals with the Reports of the Commission and provides as follows :—

(1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the

reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State and in either case the Governor shall, on receipt of such report cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

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## PART XV

### ELECTIONS

The Government in a democracy is constituted by the elected representatives of the people, forming the Parliament of the State Legislatures. To these bodies elections are to be held periodically and at such elections disputes arise with respect to the validity of the elections. As in a democracy the existence of various political parties contesting the election is a normal feature. It is very necessary that the superintendence, direction and control of elections with respect to the preparation of the electoral rolls as well as the actual conduct of election and the adjudication of the disputes among the contestants be vested in an independent body which may function without being influenced by political parties. For this purpose our Constitution has made provisions in this part by the constitution of an independent Election Commission, commanding confidence of all the political parties

The Election Commission shall consist of a Chief Election Commissioner and other Election Commissioners, all of whom shall be appointed by the President. The Chief Election Commissioner shall act as the Chairman of the Election Commission [Article 324 (2)].

The functions of the Election Commission are described in Article 324, sub-clause (1) as follows :—

“The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to Parliament and to the Legislature of every State and of elections to the offices of President and the Vice-President held under this Constitution including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this

Constitution as the Election Commission).”

Before each general election to the House of the People and the Legislative Assembly of each State, the President may appoint (after consultation with the Election Commission) Regional Commissioners to assist the Election Commission in the performance of its functions. The President has power to determine the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners and the condition of service of the Chief Election Commissioner shall not be varied to his dissadvantage after his appointment. [Article 324 sub-clause (5)].

The Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court, *viz.*, he shall not be removed from his office except by an order of the President passed after an address by each House of Parliament, supported by a majority of not less than two-thirds of the members of that House present and voting, has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. For this purpose, Parliament may regulate the procedure for the presentation of an address and for the investigation and proof of his misbehaviour or incapacity. [Article 124 (5)].

Any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in Article 102, the question shall be referred for the decision of the President and his decision shall be final [Article 103 sub-clause (10)]; and before giving any decision the President shall obtain the opinion of the Election Commission and shall act according to such opinion [Article 103 sub-clause (2)].

If any question arises as to whether a member of a House of the Legislature of State has become subject to any of the  
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disqualifications the question shall be referred for the decision of the Governor whose decision (after obtaining the opinion of the Election Commission thereon) shall be final.

The entire electoral machinery of the Union as well as of the State is placed in the hands of a centralised body, the Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen by any local Government. The Commission will, of course, be assisted by Regional Commissioners, but they will be working not under the Control of the State Governments but under the control of the Election Commission and they will not be liable to be removed except on the recommendation of the Chief Election Commissioner.

The Election Commission is independent of any Executive control in as much as members of the Election Commission (and Regional Commissioners) shall not be removed by the President except on the recommendation of the Chief Election Commissioner, and the Chief Election Commissioner shall not be removed except in the manner provided in Article 124 (4) relating to the removal of a Judge of the Supreme Court.

The President or the Governor of a State, shall when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of Article 124.

Article 325 is in the following words and provides that no person is ineligible for being elector on grounds of religion, race, caste or sex :—

“There shall be one general Electoral Roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any

special electoral roll for any such constituency on grounds only of religion or caste, sex or any of them."

Article 326 provides for Adult Suffrage and is quoted below :—

"The elections to the House of the People and to the Legislative Assembly of every State shall be on basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any Law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any Law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

Article 327 gives power to Parliament to make provision with respect to elections to Legislatures and is in the following words :—

"Subject to the provisions of this Constitution, the Parliament may from time to time by Law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due Constitution of such House or Houses."

The power of a Legislature of a State, regarding elections to State Legislature are given below in Article 328 :—

"Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by Law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due Constitution of such House or Houses."

Article 329 is one of the most important Articles in this Part of the Constitution and bars the jurisdiction of the courts to interfere in electoral matters ; it is in the following words.

“Notwithstanding anything in the Constitution :—

- (a) the validity of any Law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328 shall not be called in question in any court.
- (b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any Law made by the appropriate Legislature.”

The aforesaid provision was necessary in order to provide an absolutely independent machinery which can guarantee speedy disposal of cases and to save the election matters from being dragged on in ordinary Law courts for a number of years with several tiers of appellate courts. The election disputes are to be decided by specially appointed Election Tribunals under the control of the Election Commission and from their judgment appeals will lie to the Supreme Court of India.

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## PART XVI

### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

The Indian Republic is a secular Democratic State and the Government is based on adult suffrage. The Constitution has abolished the communal representations and separate electorates which were imposed on India in 1909 and which ultimately led to the partition of the Country. In our Constitution there is no separate electorate and no seats in Legislatures or services are reserved on communal or religious basis. However, under this Part of the Constitution Special Provisions relating to certain classes are made for a limited period in view of their social or economic backwardness. It was quite befitting to incorporate such provisions in order to safeguard their interests and to bring them up to the same level as other people at an early date. Thus, seats are reserved in the House of the People and the Legislative Assemblies for the Scheduled Castes and Scheduled Tribes and the Anglo-Indian community. In the services also their interests are safeguarded and special provisions are made for them. The Constitution has recognized it to be the duty of the State to provide for the uplift and rise of the backward classes in society so that soon they may be as advanced and prosperous as other section of the Indian Society. Various Articles dealing with these matters are given below in full and the provisions are very clearly laid therein.

Article 330 provides for reservation of seats for Scheduled Castes and Schedule Tribes in the House of the People, and is given below :—

(1) Seats shall be reserved in the House of the People for—

- (a) the Scheduled Castes ;
- (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam ; and
- (c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or Part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State."

Special provision relating to representation of the Anglo-Indian Community in the House of the People is incorporated in Article 331 below :—

"Notwithstanding anything in Article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People nominate not more than two members of that community to the House of the People."

Reservation of seats for Scheduled Castes or Scheduled Tribes in the Legislative Assemblies of the States is pointed in Article 332, quoted below :—

"(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong."

Representation of the Anglo-Indian community in the Legislative Assemblies of the States is provided by the following Article 333 :—

"Notwithstanding anything in Article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian Community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate."

The aforesaid provisions for reservation of seats and special representation are to expire after 20 years<sup>1</sup> from the commencement of this Constitution, according to Article 334, mentioned below :—

"Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to :—

- (a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the State ; and

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1. Sub. by the Constitution 8th Amendment Act, 1959.

- (b) the representation of the Anglo-Indian Community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution :

Provided that nothing in this Article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly as the case may be."

The claims of Scheduled Castes and Scheduled Tribes to services and posts are to be considered, according to Article 335, quoted below :—

"The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

In certain services the claims of the Anglo-Indian Community are recognised for ten years by Article 336 in following words :—

"(1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years :

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in Clause (1) shall bar the appointment of members of the Anglo-Indian Community to posts other than, or in addition to, those reserved for the community under that clause if such members are found

qualified for appointment on merit as compared with the members of other communities."

The Constitution has also made special provision for ten years with respect to educational grants for the benefit of Anglo-Indian Community and Article 337 provides :—

"During the first three financial years after the commencement of this Constitution, the same grants, if any shall be made by the Union and by each State [\*\*\*]<sup>1</sup> for the benefit of the Anglo-Indian Community in respect of education as were made in the financial year ending on the thirty-first day of March 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years :

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian Community, shall cease ;

Provided further that no educational institution shall be entitled to receive any grant under this Article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian Community."

The State has taken the responsibility of itself for the early development and progress of the Scheduled Castes and Scheduled Tribes in this country and the Constitution has made a special provision for appointing a special officer to look after their interest and welfare ; and it is provided by the following Article 338 :—

"(1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working

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1. The words (specified in Part A or Part B of the First Schedule) omitted by the Constitution (Seventh Amendment) Act, 1956, Section 29.

of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each Houses of Parliament.

(3) In this Article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under Clause (1) of Article 340, by order specify and also to the Anglo-Indian Community."

The Control of the Union over the administration of the Scheduled Areas and the welfare of Scheduled Tribes is exhibited by Article 339, quoted below :—

"(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution, by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States [\*\*\*].<sup>1</sup>

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The Executive power of the Union shall extend to the giving of directions to [a State]<sup>2</sup> as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State."

The President is also authorised to appoint a Commission to investigate the conditions of backward classes in the country, and Article 340 provides for it in the following words :—

"(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should

1. The words (specified in Part A or Part B of the First Schedule) omitted by the Constitution (Seventh Amendment) Act, 1956.

2. Substituted by *ibid*.



be made for the purpose by the Union or any State and the conditions support to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament."

Articles 341 and 342 give power to the President to specify the Scheduled Castes and the Scheduled Tribes and they are quoted below:—

**Article 341. Scheduled Castes.**—"(1) The President may, after consultation with the Governor of a State, by public notification, specify the castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

**Article 342. Scheduled Tribes.**—"(1) The President may, after consultation with the Governor of a State, or Union territory by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."



## PART XVII

### OFFICIAL LANGUAGE

**General.**—The bonds of unity in the people of a country are, to a great extent, strengthened by a Common language which is a very vital force for effecting temperance and homogeneity. In our country there was no common Indian language and there were a dozen main languages and over two hundred minor dialects spoken by various communities and tribes when the framers of the Constitution took up the task of providing the Constitution, the Fundamental object of which was to secure the permanent Unity and undivided allegiance of the entire people inhabiting this vast sub-continent. In this country English had been the official language for over a century for the whole country and thus it had acquired the position of a Common language although it was hardly spoken even by about one per cent. of the population. After independence English, being a foreign language and not the language of the common men in any part of the country, could not remain the common national language. Out of the dozen main languages, Hindi is spoken by the largest number of the people, and regional languages, like Bengali, Marathi, Gurumukhi, Telugu, Tamil, Kanarese and Gujrati are firmly rooted and are the vehicles of indigenous literature and culture. Being the language of the masses, they could not be obliterated and their importance is therefore, recognised in our Constitution for regional purposes ; they constitute the very instrument of the expression of life and traditions of the regional masses. However, every nation and national Government must have a common national language for official purposes as well as for generating an atmosphere conducive to the moulding of national Unity and homogeneity. The Constitution makers have chosen Hindi in Devanagiri Script to be the national language of the country for all the official and inter-State purposes. As English had permeated the official circles of the whole country, it was not easy to replace it immediately, and therefore, the Constitution provides a transitional period of fifteen years.

It is also provided that the National Government should look to the development and progress of Hindi, the language of the nation as well as all other regional languages in this country. Now even States are being recognised on linguistic basis, a principle which has been recognised recently by the States Reorganisation Commission of India and the Government has also approved it. Various Articles dealing with this matter are quoted below.

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## CHAPTER I

### Language of the Union.

**Article 343. Official Language of the Union.**—“(1) The Official Language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1) for a period of fifteen years from the commencement of this Constitution the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement :

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this Article, Parliament may by law provide for the use, after the said period of fifteen years, of—

(a) the English language, or

(b) the Devanagari form of numerals

for the purposes as may be specified in the law.

**Article 344. Commission and Committee of Parliament on official language.**—(1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the 8th Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the progressive use of the Hindi Language for the official purposes of the Union ;
- (b) restrictions on the use of the English language for all or any of the official purposes of the Union.
- (c) the language to be used for all or any of the purposes mentioned in Article 348 ;
- (d) the form of numerals to be used for any one or more specified purposes of the Union ;
- (e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2) the Commission shall have due regard to the industrial, cultural, and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the commission constituted under Clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in Article 343, the President may, after consideration of the report referred to in Clause (5), issue directions in accordance with the whole or any part of that report.'

## CHAPTER II

### Regional Languages.

#### **Article 345. Official language or languages of a State.—**

Subject to the provisions of Articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State.

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

**Article 346. Official language for communication between one State and another or between a State and the Union.—**"The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union :

Provided that if two or more States agree that the Hindi Language should be the official language for communication between such States, that language may be used for such communication."

**Article 347. Special provision relating to language spoken by a Section of the population of a State.—**"On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify."

## CHAPTER III

**Language of the Supreme Court, High Courts, etc.**

**Article 348. Language to be used in the Supreme Court and the High Courts and for Acts, Bills, etc.**—“(1) Notwithstanding anything in the foregoing provisions of this part until Parliament by law otherwise provides :—

- (a) all proceedings in the Supreme Court and in every High Court,
- (b) the authoritative texts :—
  - (i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,
  - (ii) of all Acts passed by Parliament or the Legislature of a State and of all ordinances promulgated by the President or the Governor of a State, and
  - (iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Notwithstanding anything in sub-clause (a) of clause (1) the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State :

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in or Acts passed by the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of

that sub-clause, a translation of the same in the English language published under that authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article."

**Article 349. Special procedure for enactment of certain laws relating to language.**—"During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision of the language to be used for any of the purposes mentioned in clause (1) of Article 348 shall be introduced or moved in either House of Parliament, without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of Article 344 and the report of the Committee constituted under clause (4) of that article.

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## CHAPTER IV

### Special Directives

**Article 350. Language to be used in representations for redress of grievances.**—"Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

**Article 351. Directive for development of the Hindi language.**—"It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other language, of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

## PART XVIII

### EMERGENCY PROVISIONS

The foregoing Parts of the Constitution have provided machinery for Government in normal times but there may arise situations which call for emergency steps to be taken by the Supreme Head of the State in abnormal times. When abnormal situations arise, the normal structure and operation cannot cope with them. Therefore, in Part XVIII of the Constitution emergency provisions are laid down in order to meet such abnormal situations. Article 352 and Article 355 have placed special responsibility on the Union to deal with emergencies whereby the security of India is threatened, whether by war or external aggression or internal disturbances ; it is also the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. Thus security and safety of the entire country and the observance of the provisions of the Constitution by the Government of every State is entirely the responsibility of the President and the Union. Part XVIII deals with emergencies of three kinds—(1) an emergency during external or internal aggression, (2) failure of the Constitutional machinery in the States, (3) financial emergency. Thus extraordinary powers are given to the President, and even the Fundamental Rights guaranteed by Part III of the Constitution may be suspended during the period of emergency.

Article 352 provides for proclamation of Emergency, and is as follows:

“(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by proclamation, make a declaration to that effect.



## (2) A Proclamation issued under clause (1)—

- (a) may be revoked by a subsequent Proclamation ;
- (b) shall be laid before each House of Parliament
- (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof."

The effect of the proclamation of emergency is that while it is in operation notwithstanding anything in this constitution, the Executive power of the Union extends to the giving of directions to any State about the manner in which it should exercise Legislative powers. In the period of emergency the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers imposing duties or authorising the conferring of powers and imposition of duties upon the Union or officers and authorities of the Union as respects that matter, even though it is not a subject in the Union List. (Article 353).

During the period of emergency the President may modify the provisions of Articles 268 to 279 relating to distribution of revenue and he may also except any of these provisions during its operation. Such exceptions and modifications shall not be effective beyond the expiration of financial year in which such proclamation ceases to operate. Against the action of the President the Constitution provides a safeguard in as much as it requires that every order made to the aforesaid effect shall as soon as may be after it is made, be laid before each House of Parliament.

According to Article 353 the effect of the Proclamation of emergency is that the Government of India shall acquire the power to give direction to the State on any matter; although the State Government is not suspended, it will be under the complete control of the Union Executive and the administration of the country will function as if under a Unitary Government. According to Article 353 in the Legislative sphere also the power of the Parliament extends to the State List and by Article 250 sub-clause (1) the Legislative competence of the Union Parliament shall be automatically widened to cover the State List also when a proclamation of emergency is in operation. Although the State Legislature is not suspended, the Union Parliament enters the State Legislative field to meet the emergency. In the financial sphere also while the Proclamation of emergency operates, the President shall have constitutional powers to modify the provisions of the Constitution which lay down the allocation of the financial relations between the Union and the States by his own order for a limited period according to Article 354. As regards the Fundamental Rights also the provisions of Article 19 are suspended in so far as they restrict the power of the State to make any law or to take any Executive action which the State would but for the provision contained in Part III of the Constitution be competent to make or to take according to Article 358 while the Proclamation of emergency is in operation. Secondly, even the enforcement of the Fundamental Rights conferred by Part III of the Constitution through the court is also suspended during the period of emergency according to Article 358.

Article 355 provides that it shall be the duty of the Union to protect every State against external aggression and internal

disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. This Article casts a duty on the Union to protect the State against external aggression and domestic violence ; the Union is also to ensure that there shall be a Constitutional Government in the State. This object is achieved through the powers conferred on the President by Articles 352 to 354 to control the Executive, Legislative as well as the financial affairs of the State. In case of break-down of the Constitutional machinery in a State the President can discharge his duties under Article 355 by resorting to the provisions contained in Articles 356 and 357 under which he can suspend State Executive and Legislature and withdraw their powers to the Union. The provisions contained in Article 355 are almost similar to those contained in the Article 4 Sub-clause (4) of the United States Constitution which says :—

“The United States shall guarantee to every State in the Union a republican form of Government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.”

Similar provisions exist in the Australian Constitution also.

Article 356 provides very stringent measures to be taken by the President in case of failure of Constitutional machinery of a State and they ought to be exercised by the Union as the last resort when all other Constitutional means fail, such as giving directions, warning and fresh elections, because Articles 356 and 357 provide for the suspension of State Executive as well as Legislature for a maximum period of three years, and during that period the Control of Union Government and the Parliament may lead to the end of Federal system.

**Article 356**, making provision in case of failure of Constitutional machinery in States, is as follows :—

“(1) If the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State

cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or as the case may be, or any body or authority in the State other than the Legislature of the State ;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament ;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation under this Article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament ;

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of

thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under Clause (3) :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is Passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but a resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People."

Article 357, providing for the exercise of Legislative powers under the Proclamation issued under Article 356, is a follows —

"(1) Where by a Proclamation issued under Clause (1) of Article 356, it has been declared that the power of the Legislature of the State shall be exercisable by or under the authority of Parliament it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to

authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf ;

- (b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof ;
- (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature."

Article 358, providing for the suspension of provisions of Article 18 during emergencies is as follows :—

"While a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any Executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done



or omitted to be done before the law so ceases to have effect."

**Article 356**, providing for the suspension of the enforcement of the rights conferred by Part III during emergencies, is as follows :—

"(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under Clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament."

**Article 360**, laying down provisions as to financial emergency, is given below :—

"(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make declaration to that effect.

(2) The provisions of clause (2) of Article 352 shall apply in relation to a Proclamation issued under this article as they apply in relation to a Proclamation of Emergency issued under Article 352.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.



- (4) Notwithstanding anything in this Constitution—
- (a) any such direction may include—
    - (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State ;
    - (ii) a provision requiring all Money Bills or other Bills to which the provisions of Article 20 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State ;
  - (b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts."
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## PART XIX

### MISCELLANEOUS

**Protection of President and Governors.**—Article 361 guarantees immunities to the President and the Governor for official acts ; whether during office or thereafter no legal action can be brought against them for any act done or purported to be done by them in exercise of their powers and duties as laid down in this Constitution. Although no action lies in the court, he is liable to be impeached under Article 61. The Governor is liable to be dismissed by the President in such cases under Article 156. Even writs cannot be issued against the President or the Governor. They are guaranteed immunities from criminal proceedings during the term of office even for their personal acts ; no process for arrest or imprisonment against them can be issued.

Even in the United States of America the President is not subject to the control of the Courts in the exercise of his powers which are to be exercised by him in his individual judgment according to the Constitution. The Courts have no power to issue an injunction against the President or to compel him to perform even the constitutionally imperative act, or a merely ministerial Act. Nor can the President be compelled to attend a Court during the term of his office.

The President, or the Governor of a State is not answerable to any court for the exercise and the performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and the performance of those powers and duties. But any person can bring appropriate proceedings against the Government of India or the Government of a State. Further, the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge for impeachment under Article 61. No criminal proceedings whatsoever can be instituted or continued

against the President, or the Governor of a State, in any court during his term of office. No process for the arrest or imprisonment of the President or the Governor shall issue from any court during his term of office. No civil proceedings in which relief is claimed against the President, or the Governor of a State can be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months next after notice in writing has been delivered to him or left at his office stating the nature of proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims; such immunities and privileges are granted in the larger interest of the State. It is also meant to give time to the President or the Governor time to consider the matter and make a suitable settlement if possible and thus avoid litigation.

**Rights and Privileges of Rulers of Indian States.—**

By the acts of the merger or integration of the Indian States various agreements or covenants were entered into between the Government of India and the rulers with regard to personal rights, privileges and dignities. Under Article 362 they have been given a constitutional recognition by providing that in making laws of Parliament or the State Legislature and in exercising the executive power the Union or the State Government shall give due regard to the guarantee or assurance given under any such covenant or agreement as is referred to in Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

**Bar to interference by courts in disputes, arising out of certain treaties, agreements etc.—**The Constitution excludes the jurisdiction of the Supreme Court as well as of any other court for taking cognizance of any dispute arising out of treatise, agreements, covenant, engagement, or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India

or any of its predecessor Government was a party and which has or has been continued in operation after such commencement or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, Sanad or other similar instrument. Such disputes are of political nature and are not justiciable; however, they can be settled by political negotiation between the ruler and the President, and the President may refer it to the Supreme Court and obtain its advice in the matter under Article 143. In this context "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State. [Article 363].

**Special provisions as to major ports and aerodromes.—**

Although a State Legislature is to make laws for the whole of the territory within the State, entries 27 and 29 of List 1 provide exception to the authority of the State Legislature and vest the Union Parliament with exclusive legislative powers over major ports and aerodromes. Special provisions may be necessary for the regulation and security of these major ports or aerodromes on account of their international character or for defence purposes. Therefore Article 64 provides "notwithstanding anything in this Constitution the President may by notification direct that as from such date as may be specified in the notification :—

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome

have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article—

- (a) “major port” means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such ports ;
- (b) “aerodrome” means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.”.

**Effect of failure to comply with, or to give effect to, directions given by the Union.**—Constitutional sanction is provided to the directions given to a State by the Union Government under any of the provisions of the Constitution. Article 365 provides as follows, “Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.” Articles 256, 257, 353 (a) and 360 (3) empower the Executive of the Union to give directions to the Governments of States. Although it is a very interesting step and makes the Federal Government the overlord above all the States, it is necessary in order to save the country from disintegration and also for the purpose of defence as well as coordination of policy. No other Federal Constitution contains such provisions.

Article 366 provides definitions of words used in this Constitution and is quoted below.

**Definitions.**—“In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them that is to say :—

- (1) “agricultural income” means agricultural income as defined for the purposes of the enactments relating to Indian Income Tax :

(2) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only ;

(3) "article" means an article of this Constitution ;

(4) "borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly ;

(5) "clause" means a clause of the article in which the expression occurs ;

(6) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled :—

(a) that it is not chargeable in respect of agricultural income ;

(b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals ;

(c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals.

(7) "corresponding Province", "corresponding Indian State", or "Corresponding State" means in cases of doubt such province, Indian State, or State as may be determined by the President to be the corresponding province, the corresponding Indian State or the Corresponding State, as the case may be, for the particular purpose in question ;

(8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and

any liability under any guarantee, and "debt charges" shall be construed accordingly ;

(9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass.

(10) "existing law" means any law, ordinance order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such law, ordinance, order, byelaw, rule or regulation ;

(11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935 ;

(12) "goods" includes all materials, commodities, and articles ;

(13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payment in the event of the profit of an undertaking falling short of a specified amount ;

(14) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes :—

(a) Any Court in the territory of India constituted or re-constituted under this Constitution as a High Court, and

(b) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution ;

(15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State ;



(16) "Part" means a part of this Constitution ;

(17) "Pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;

(18) "Proclamation of Emergency" means a proclamation issued under Clause VI of Article 352 ;

(19) "public notification" means a notification in the Gazette of India or, as the case may be, the Official Gazette of a State ;

(20) "Railway" does not include :—

(a) a tramway wholly within a Municipal Area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway ;

<sup>1</sup>[\* \* \* \* \*]

(22) "Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in Clause (1) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State and includes any person who for the time being is recognised by the President as the successor of such Ruler ;

(23) "Schedule" means a Schedule to this Constitution ;

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution ;

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or

1. *Note*.—Clause 21 is omitted by the Constitution (Seventh Amendment) Act, 1956.

tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution ;

(26) "Securities" includes stock ;

(27) "Sub-clause" means a sub-clause of the Clause in which the expression occurs ;

(28) "taxation" includes the imposition of any tax or import whether general or local or special and tax shall be construed accordingly ;

(29) "tax" on income includes a tax in the nature of an excess profits tax :

<sup>1</sup>[(30) "Union Territory" means any Union Territory, specified in the First Schedule and includes any other territory composed within the territory of India but not specified in that Schedule.]

**Interpretation.**—Article 367, providing interpretation is as follows :—

"(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or Laws of, or made by, Parliament or to Acts or Laws of or made by, the Legislature of a State [\*\*\*] shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor as the case may be.

(3) For the purposes of this Constitution "foreign States" means any State other than India ;

Provided that subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order.

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1. Substituted by the Constitution (Seventh Amendment) Act, 1956 .

## PART XX

### AMENDMENT OF THE CONSTITUTION

Article 368 lays down the procedure for amendment of the Constitution, and is in the following words :—

“An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Provided that if such amendment seeks to make any change in—

- (a) Article 54, Article 55, Article 73, Article 162 or Article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this Article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.”

Every Federal Constitution is a compact between the Federation and the Federating Units. Therefore, it cannot be

changed like the ordinary laws by the Legislature and usually a special procedure for its alteration is laid down in the Constitution itself. The very spirit of Federalism requires that the Constitutional amendments shall be made in the manner and by the process agreed to by Federating Units as provided in the Constitution. Generally, the Federal Constitution ought to be rigid from the very nature of its relation in order to protect the autonomy of the various units from being trampled upon by Federal Government or the Federal Legislature and to guard the very powers granted to the Federating Units. But at the same time in the changing circumstances and with the progress of time it becomes absolutely necessary to alter the constitutional provisions to meet the changing needs of the society. Therefore, while a Federal Constitution ought to be sufficiently rigid to protect the Governments of several units, it ought to be flexible enough to facilitate amendments to cope with the growth of a living, vital organic people full of vitality and energy in the age of scientific progress. With this end in view the Constitution in India, although Federal in character, has sought to avoid the difficult processes laid down by the American and the Australian Constitutions relating to amendments. Our Constitution is partly flexible and partly rigid and a large number of provisions of the Constitution are open to amendment by the Union Parliament by the ordinary process of Legislation. Pt. Jawahar Lal Nehru, the Prime Minister of India, has explained the reasons for introducing the element of flexibility in our Constitution in the following memorable words :—

“While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in Constitution. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital organic people. In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow.”

Our Constitution has prescribed the following there different modes for the amendment of the different provisions in the Constitution :—

(i) A special mode is prescribed in the case of a few matters relating to the Federal structure of the Constitution ; these matters are—

- (a) the manner of election of the President under Articles 54 and 55,
- (b) the extent of the executive power of the Union and the States under Articles 73 and 162 respectively,
- (c) the Supreme Court and the High Courts under Article 241, Chapter IV of Part V and Chapter V of Part VI,
- (d) distribution of Legislative powers between the Union and the States under Chapter I of Part XI,
- (e) representation of States in Parliament under Chapter I of Part XI, and
- (f) provisions of Article 368.

In the case of the aforesaid matters the mode of amendment is that a Bill for amendment must be passed by at least two-thirds majority of both the Houses of Parliament and after being passed it must be also ratified by the Legislatures of at least half of the States—

(ii) A large number of provisions given below are open to amendment by the Union Parliament by a simple majority like the ordinary Laws :—

- (a) creation of new States or reconstitution of the existing States under Articles 3 and 4,
- (b) creation or abolition of upper chambers of the States under Article 169,
- (c) Constitution of centrally administered areas under Article 240,
- (d) administration of Scheduled areas and Scheduled Tribes under paragraph 7 of the Fifth Schedule and paragraph 21 of the Sixth Schedule.

(iii) The remaining provisions of the Constitution are liable to be amended by the Parliament by a majority of two-thirds of the members of each House present and voting. No ratification by the State Legislatures will be required for these amendments.

The amendments to the Constitution require the President's assent ; here our Constitution differs from that of the United States where the constitutional amendments are not to be presented to the President.

Under our Constitution the initiation of the amendment to the Constitution rests with either House of the Parliament. In this way the traditions of the Parliamentary Government and ministerial responsibility are well recognized and also a guarantee for the Federal structure of the State is firmly rooted. At the same time the States are not given any power to initiate proposals to amend the Constitution in respect of any matter. The Constitution is quite elastic in prescribing the above modes of amendment so that it may keep pace with changing times and may not hamper the growth of the society in a healthy direction. But at the same time the Constitution is inelastic or inflexible so far as the amendment of the principles of Federal structure is concerned, thus providing for the preservation of federalism and protecting the rights of the Federal units. The framers of our Constitution had the experience of other Federal Constitutions before them. Therefore, they have adopted the aforesaid simple and reasonably elastic procedure for the amendment of the Constitution. As reference to the States or their Legislatures might cause much delay and thereby nullify any amendments to the Constitution as it has very often happened in the United States of America, our Constitution prescribes for the consent of the State Legislatures only in respect of amendment in the Constitution which affects the basic principles of Federal policy agreed to in the original Federal compact. It will be further seen that Article 368 does not require ratification by all the States Legislatures but ratification by the Legislature of one half of the Part A and Part B States is sufficient. Further, our Constitution does not reserve the amendments to the Constitution for ratification by the People as it is done in Switzerland and in Australia. Although the

people are the real sovereign and ultimately sovereignty vests in them, their representatives assemble in the Parliament or the State Legislatures are the legal sovereign and they are given the power to amend the Constitution in accordance with the prescribed rules without seeking for the approval of the People directly. In framing the provisions for the amendment of the Constitution the Constitution makers have really looked for the convenience in providing for the needs of our rapidly growing and progressive society in modern times of scientific developments and world-relationship. These provisions are adequate to meet the growing and fast changing needs of our nascent modern State whose multifarious activities embrace every phase of human life and which is out to take its rightful place in the world.

Unlike our Constitution, in the Constitution of the United States of America, the process of formal amendment as prescribed by the Constitution is rigid and the task of adapting the Constitution to changes in social conditions has therefore imperceptively passed into the hands of the Judiciary by means of its power of judicial interpretation.

The ease with which the First four Amendments have been enacted in our Constitution by the Parliament demonstrates that our Constitution contains the potentiality of peaceful alterations to suit the needs of the people without loss of much time ; such a procedure would be considered as revolutionary in any other country. India has thus achieved a unique credit by setting up a new precedent in Constitutionalism, *viz.*, that of imparting flexibility to a written Constitution and of harmonising 'a Bill of Rights' with ultimate Parliamentary sovereignty.

### **The Constitution Amendment Acts.**

From the day of commencement of this Constitution up to the end of November 1955, the Constitution has been amended four times by passing four Acts of Parliament under Article 368. The Amendments carried out with much ease and without loss of much time illustrate the flexibility of our Constitution.

#### **1. The Constitution (First Amendment), Act 1951**

After the commencement of the Constitution the State Legislatures found it impossible to legislate for the needs of



the society as the provisions contained in Article 31, sub-clauses (2), (4) and (6) of the Constitution were found inadequate to save the laws abolishing Zamindari and introducing a new system of land tenure throughout the country. The Bihar Land Reforms Act was declared void by the Patna High Court on the ground that it contravened the provisions of Article 14 of the Constitution.

But the abolition of Zamindari was most essential programme of the Indian National Congress which commanded majority in the Parliament as well as almost in all the State Legislatures. Even from the point of view of economics abolition of Zamindari, an outdated institution and a relic of feudalism, was absolutely necessary in order to infuse new enthusiasm in the people and to prepare them to shoulder the democratic responsibilities in a free country. The Land Reforms Acts passed by various State Legislatures were also pending before the Supreme Court or various High Courts and their validity was challenged. Legal opinion was that these were clearly *ultra vires* of the Constitution. Therefore, the Parliament had to seek for amendment of the Constitution within a very short time after its commencement and the First Constitution Amendment Act of 1951 came into force on 18th June, 1951. This Amendment Act was challenged by the Zamindars of Bihar and Uttar Pradesh, mostly on the ground that the provisional Parliament was not competent to amend the Constitution but the Supreme Court has upheld the validity of the First Constitution (Amendment) Act, 1951 in *Shankari Prasad v. The State of Bihar*.<sup>1</sup>

The First Amendment Act amended Articles 15, 19, 85, 87, 174, 176, 341, 342, 372 and 376, and it inserted new provisions.—Articles 31A, 31B, Ninth Schedule.

The aforesaid changes were made in order to counter-act the effects of some judicial decisions.

In *Champaram v. State of Madras*,<sup>2</sup> the Madras High Court had held that the Madras Communal G. O., which distributed seats in State educational institutions according to communities in certain proportions, was void on the ground of contravention

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1. A. I. R. 1951 S. C. 5.

2. A. I. R. 1951 Mad. 120.

of Articles 15 (1) and 29 (2). This decision was upheld by the Supreme Court also on the ground of contravening Article 29 (2) only and no decision was given in regard to Article 15 (1). While such a legislation is contemplated by Article 46 of the Constitution, containing a Directive upon the State to promote the educational and economic interests of the "Weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes," Articles 15 (1) and 29 (2) stood in the way. Accordingly by this Amendment an exception in favour of these classes was engrafted upon both Articles 15 (1) and 29 (2), by inserting Clause (4) in Article 15.

In Article 19 (2) amendment was made necessary by the observations of the Supreme Court in *Ramesh Thappar v. State of Madras*,<sup>1</sup> as in interpreting the expression 'Security of the State', it laid down that this expression referred only to the 'serious and aggravated forms of public disorder' which endangered the existence of the State itself, as distinguished from minor or local breaches of public order. Therefore 'it was necessary for the Government to have power to control plainly anti-social activities, such as incitement for individual murders or riot. Therefore, 'public order' and 'incitement to an offence' were added as additional grounds of restriction in Article 19 (2).

In Article 19 (6) the amendment was mainly due to the decision of the Allahabad High Court in *Motilal v. State of Uttar Pradesh*,<sup>2</sup> which stood in the way of the Schemes of State nationalisation of any trade, business, industry or service, because it was impossible for the Government to justify the "reasonableness" of its action in every case in a court of justice. Therefore, "The carrying out by the State of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise" was, accordingly, excepted out of the operation of Article 19 (1) (g), by inserting part (ii) in sub-clause (6). The power of the State to lay down technical and professional qualifications for the carrying of any trade, business, profession and occupation has also been taken out of the scope of judicial review on the ground of 'reasonableness' by inserting part (i) in clause (6) of Article 19.

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1. 1951 S. C. R. 525.

2. 1950 S. C. R. 594 (601).

Articles 31A, 31B, and Ninth Schedule were added as a result of the reaction against the decisions of Patna High Court in *Kameshwar vs. Province of Bihar*,<sup>1</sup> and *Kameshwar vs. State of Bihar*.<sup>2</sup> In the former case, the Court invalidated the Bihar State Management of Estates and Tenures Act, 1949 (which provided for taking over the management of private estates on payment of allowance to the Rulers) on the ground that certification under Article 31 (6) could not save the impugned law from attack on the ground of contravention of any other Article relating to Fundamental Rights excepting Article 31 (2) and the Act was declared to be *void* for contravention of Article 19 (1) (f). In the latter case, the court held that the Bihar Land Reforms Act, 1950, was *void* for contravening Article 14 as it discriminated between the rich and the poor in fixing the rates of compensation, and that the assent of the President under Article 31 (4) merely saved the law from challenge on the ground of contravention of Article 31 (2) only but not on the ground of contravention of any other Article of Part III of the Constitution.

As the Agrarian Reforms in the country were absolutely necessary, the Government thought it necessary to place the Agrarian Legislation in the different States out of the reach of Judicial review on the ground of contravention of the Fundamental Rights. Accordingly Article 31-A excepted laws providing for acquisition of any estate or any rights therein, from the operation of any of the provisions of Part III of the Constitution, relating to the Fundamental Rights. The validity of the States Acts, already passed by the Legislature, was ensured by Article 31 B and Ninth Schedule, all such Acts are mentioned in the Ninth Schedule and notwithstanding any judgment, decree, or order of any court are saved.

In Articles 85, 87, 174, 176, 341, 342, 372 and 376 also minor changes were made with the object of removing difficulties in the working of the Constitution.

### **The Constitution (Second Amendment) Act, 1952.**

Some changes were made in Article 81(1)(b) in order to bring it into line with Article 170(2), by removing the upper

1. A. I. R. 1950 Pat. 392.
2. A. I. R. 1951 Pat. 91 (S. B.).

limit from Article 81(1)(b) by omitting the words "not less than one member for every 75,000 of the population." As this Bill had sought to make a change in the representation of the States in Parliament, it had to be referred to the State Legislatures for ratification as required by Article 368 and it was ratified by them. It received the assent of the President on 1st May, 1953 and came into effect from that day.

### **The Constitution (Third Amendment) Act, 1954.**

The Concurrent Power in respect of certain commodities was conferred on the Union by Article 369 for five years only as a transitional measure although these commodities were in the State List; it was under this permission that the war-time controls by the Government of India over commodities were continued. The continuance of Central control was found to be necessary in the interest of the national economy. Therefore, the Parliament passed the Constitution (Third Amendment) Act, 1954, for amending Entry 33 of List III so as to include most of the commodities specified in the expiring Article 369. As the Bill sought to amend a List of the Seventh Schedule, it was also ratified by the Legislatures of the States in Parts A and B of the First Schedule, according to Proviso (c) of Article 368. It received the assent of the President on 22nd February, 1955, and came into force from that day.

By this amendment, in the Seventh Schedule to the Constitution, for Entry 33 of List III, the following entry was substituted.—

"33. Trade and Commerce in, and the production, supply and distribution of,—

- (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, 'and imported goods of the same kind as such products';
- (b) food-stuffs, including edible oilseeds and oils';
- (c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether, ginned or unginned, and cotton seed, and

(e) raw jute? ”

### **The Constitution (Fourth Amendment) Act, 1955.**

As a reaction against the decisions of the Supreme Court in the four cases, mentioned below, this Amendment was made:—

- (1) *State of West Bengal vs. Subodh Gopal*<sup>1</sup> ;
- (2) *Dwarkanadas vs. Sholapur Spinning and Weaving Co.*<sup>2</sup> ;
- (3) *State of West Bengal vs. Bela Banerji*<sup>3</sup> ;
- (4) *Saghir Ahmad vs. State of Uttar Pradesh*.<sup>4</sup>

This Amendment has introduced the following changes:—

- (i) Amendment of clause (2) of Article 31 ;
- (ii) Insertion of a new clause (2A) in Article 31 ;
- (iii) Substitution of Article 31A, by adding four new sub-clauses to clause (1) of the Article ;
- (iv) Substitution of Article 305.
- (v) Addition of seven new Entries in the Ninth Schedule.

The President's assent to the Bill, after being passed through the Parliament, was received on 27th April, 1955, and it came into force with effect from that date.

The amended Articles are as follows:—

**Article 31.** [(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or

1. 1954 S. C. R. 587.
2. 1954 S. C. R. 674.
3. 1954 S. C. R. 41.
4. 1954 S. C. R. 1218.

to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

**Article 31-A. Saving of laws providing for acquisition of estate etc.**—“(1) Notwithstanding anything contained in article 13, no law providing for—

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporation, or
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”)

(2) In this article,—

(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local



equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jagir*, *inam* or *muafi* or other similar grants ; and in the States of Madras and Travancore Cochin, any *jamam* right.

(b) the expression "right", in relation to an estate, shall include any right vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under riyat or other intermediary and any rights or privileges in respect of land revenue.

**Article 305. Saving of existing laws and laws providing for State monopolies.**—Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct ; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to any such matter as is referred to in sub-clause (ii) of clause (6) of article 19.

### Ninth Schedule Amendment

14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U. P. Act XXVI of 1948).

16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).

17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938) as inserted by section 40 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).

18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).

20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXVI of 1951).



### Object of Amendments

**Article 31 (2).**—The object of amending Article 31 (2) was to distinguish the scope of clause (2) from clause (1) which had been blurred by the decisions of the Supreme Court in the cases of Subodh Gopal and Dwarkadas that the two classes relate to the same subject. It was, therefore, considered necessary to restate more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory or prohibitory laws of the State results in 'deprivation of property'.

The Select Committee had recommended :—

"...that although in all cases falling within the proposed clause (2) of Article 31 compensation should be provided, the quantum of compensation should be left to be determined by the Legislature, and it should not be open to the courts to go into the question on the ground that the compensation provided by it is not adequate."

According to Government, it was not possible to carry out the great schemes of social engineering in the country which the State had undertaken or was about to undertake. 'full market value' was to be paid and if the adequacy of the compensation provided was justiciable in every case. In *Bela Banerji's*<sup>1</sup> case the Supreme Court had held that the Court had jurisdiction to enquire in every case of appropriation of private property by the State whether the true value of the property appropriated has been ensured, and that 'compensation' means "a just equivalent of what the owner has been deprived of" taking into account all the elements which make up the true value of the property appropriated".

Therefore, amendment of Article 31 (2) became absolutely necessary so that the large projects for the uplift of the community in general and the reconstruction of the new socialistic order in the country may be undertaken, and now adequacy of compensation is made non-justiciable.

**Article 31, (clause 2A)**—In order to supersede the decisions of the Supreme Court in the cases of *Subodh Gopal*<sup>2</sup>

1. 1954 S. C. R. 41.

2. 1954 S. C. R. 587.

*Dwarkanadas*,<sup>1</sup> and *Saghir Ahmad*,<sup>2</sup> clause (2A) has been added to Article 31, so that it may no longer be possible for the courts to take an extended view of the word, "Acquisition" as was taken in these cases. For the same reason, the words 'taking possession of' in clause (2) were substituted by the the word 'requisitioned.'

The result of the Supreme Court decisions was that even though the State did not 'acquire' any property having it transferred to itself, the constitutional obligation to pay compensation under Article 31 (2) would arise if the owner of a property was substantially deprived of the lawful enjoyment of the property in the manner it was capable of being enjoyed, by reason of State action. Now this decision of the Supreme Court is superseded by this Amendment which clearly lays down that there is no obligation to pay compensation under Article 31 in any case where the State does not acquire the ownership or the right to possession of the property. Further the Amendment extends the scope of clause (2) to cases of acquisition of property for purposes of a corporation owned or controlled by the State on the same footing as an acquisition for purposes of the State itself. It is now clear that no question of compensation under Article 31 would arise when a property is injured or destroyed as a result of the exercise of 'Police Powers' by the State or even where objectionable property is seized in the exercise of such powers, for, in neither case, is the property 'requisitioned' in the sense of effecting a transfer of the right to possession to the State. Thus now the only cases where compensation is payable under Article 31 are—where any property is physically or constitutionally transferred to the State or to a corporation owned or controlled by the State. Article 19(1) (f) will no longer have any application to cases which come under Article 31 (2) and conversely. By virtue of this clause 2A, it is clear that clauses (1) and (2) relate to different subjects and they are non co-extensive. While all cases of 'deprivation' are included in clause (1), only the cases of 'acquisition and requisition', involving transference of ownership or right to possession to the State are specifically dealt with in clause (2) and no other mode of deprivation is included in clause (2).

1. 1954 S. C. R. 674.

2. 1954 S. C. R. 1218.

**Article 31A.**—The object of amending Article 31A was to take out not only laws relating to abolition of Zamindari but also other laws for agrarian and social welfare, affecting proprietary rights altogether from the purview of Articles 13, 14, 19 and 31, and they are placed above challenge in the Courts. In the statement of objects and reasons, it is said :—

- (i) While the abolition of Zamindaries and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our best objectives in land reform are the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the right of landowners and tenants in agricultural holdings.
- (ii) In the interests of national economy the State should have full control over the mineral and oil resources of the country, including in particular, the power to cancel or modify the terms and conditions of prospecting licences, mining leases and similar agreements.
- (iii) It is often necessary to take over under State management for a temporary period a commercial or industrial undertaking or other property in the public interest or in order to secure the better management of the undertaking of property.
- (iv) The reforms in company law now under contemplation, like the progressive elimination of the Managing Agency system, provision for the compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, etc., require to be placed above challenge."

The effect of Amendment of Article 31A is that while the original Article 31A protected the laws for the acquisition of any 'estate' or of rights therein, the amended Article includes

within it the following four other classes, of laws providing for—

- (a) taking over the management of any property by the State for a limited period ;
- (b) amalgamation of two or more corporations ;
- (c) extinguishment or modification of rights of persons interested in corporation ;
- (d) extinguishment or modification of rights occurring under any agreement, lease or licence relating to minerals. Secondly, the definition of 'estate' has been enlarged to include not only the interests of 'intermediaries' but also of 'Raiyots and under-Raiyots.'

This Article has barred Judicial review of laws concerning the aforesaid subjects on the ground of contravention of Articles 14, 19 and 31. However, on other grounds the law can be challenged in court. The Article was amended in order to counteract the effects of the two '*Sholapur Cases*.'<sup>1</sup>

**Ninth Schedule.**—By adding seven new entries in the Ninth Schedule, the Fourth Amendment has brought seven more enactments within the purview of Article 31B, and their validity is ensured with retrospective effect. This amendment is complementary to the amendment of Article 31A, and these enactments are excluded from the entire purview of Part III of the Constitution.

**Article 305.**—Its object was to provide for monopoly trading by the State, and to make it immune from attack on the ground of contravention of Articles 301 and 303.

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1. Chiranjit Lal vs. Union of India, 1951 S. C. 41 ; Dwarkadas vs. Sholapur Spinning & Weaving Co. 1954, S. C. 674 (683).

**The Constitution (Fifth Amendment) Act, 1956**

This Amendment Act came into force on 24th December, 1955. It has substituted the following proviso in place of the Proviso to Article 3 of the Constitution :—

“Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill effects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

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**The Constitution (Sixth Amendment) Act, 1956**

In respect of sales tax relating to inter-State trade or commerce a controversy has arisen about the spheres of the Parliament and the State Legislatures and after the judgment of the Supreme Court it was considered necessary to define their spheres more clearly, therefore this Amendment Act was passed. In the Union List of the Seventh Schedule a new Article 92A provides as follows :—

“92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.”

In the State List of the Seventh Schedule, for entry 54, the following entry was substituted :—

“54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.”

In Clause (1) of Article 269, the following sub-clause was added,

“(g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the

course of inter-State trade or commerce. In Article 269, the following clause was added,

“(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.”

In Article 286, the Explanation of clause 1 was omitted, and for clauses (2) and (3), the following clauses were substituted,

“(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.”

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### **The Constitution (Seventh Amendment) Act, 1956 (State's Reorganisation Act)**

On the coming into force of the Constitution, the territory of India comprised of (1) the British Indian Provinces, which were given the status of Part A States in the Constitution, (2) the important Princely States, which were given the status of Part B States in the Constitution (3) the less important Princely State, and Ajmer, Coorg and Delhi, which were given the status of Part C States in the Constitution, and (4) the Andaman and Nicobar Islands. Their territories were also defined in the First Schedule to the Constitution.

For administrative, economic and political reasons it was considered necessary to reorganise the States and their territories and a State's Reorganisation Commission was appointed. It submitted its Report which was circulated for public opinion and also for the opinion of the Legislatures of the States. Much controversy was raised throughout the country and



ultimately the Parliament passed the States Reorganisation Act, 1956, the Bihar and West Bengal (Transfer of Territories) Act, 1956, and in the light of these Acts, the Parliament passed the Seventh Amendment to the Constitution Act which came into force on 19th October, 1956. The distinction between Part A, Part B and Part C States has been abolished and now there will be only one kind of "State." All the Part A and Part B States, and all the Part C States except Delhi, Himachal Pradesh, Manipur and Tripura, after reorganisation of their territories, and in some cases after merger with other States, are now styled as "States." The Chapter in the Constitution dealing with Part B and Part C States has been repealed. A new category, known as "the Union Territories," has been introduced by this Act; it is to consist of the territories, (1) Delhi, (2) Himachal Pradesh, (3) Manipur, (4) Tripura, (5) The Andaman and Nicobar Islands, and (6) The Laccadive, Minicoy and Amindiri Islands.

Apart from the aforesaid six "Territories", India was divided into 14 States, viz. (1) Andhra Pradesh, (2) Assam, (3) Bihar, (4) Bombay, (5) Kerala, (6) Madhya Pradesh, (7) Madras, (8) Mysore, (9) Orissa, (10) Punjab, (11) Rajasthan, (12) Uttar Pradesh, (13) West Bengal, (14) Jammu and Kashmir. All controversy about the status of States of Jammu and Kashmir has been set at rest and it is also now a State like so many others in the Indian territory.

The boundaries of the various States have been much altered as will appear from the First Schedule to the Constitution which is given in its amended form in this book. The First Schedule to the Constitution has been completely changed by this Amendment.

The Fourth Schedule to the Constitution has been completely changed and in its new form it is given in this book. It relates to the allocation of seats in the Council of States. Articles 81 and 82 of the Constitution, relating to the composition of the House of the People have been substituted by the following:—

**"Art. 81. Composition of the House of the People.**—(1) Subject to the provisions of Article 331, the House of the People shall consist of—



(a) not more than five hundred members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

(3) In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

82. *Readjustment after each census.*—Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine ;

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.”

For Article 170 of the Constitution relating to composition of the Legislative Assembly the following Article has been substituted.

“Art. 170. *Composition of the Legislative Assemblies.*—(1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in each manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

*Explanation.*—In this clause, the expression “population” means the population as ascertained as the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territory constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine ;

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly.”

In respect to the High Courts in place of Articles 220, 224, 230, 231 and 232 of the Constitution, the new Articles have been substituted. It is provided that no person who after the commencement of this Constitution, has held office as a permanent Judge of a High Court, except as a permanent Judge of a High Court in the former Part B State, shall plead or act in any Court or before any authority in India except the Supreme Court and the other High Courts. Now additional and Acting Judges also can be appointed in the High Courts for limited period. Under Article 230 the Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union Territory. Parliament may also establish a common High Court for two or more States.

The Administration of “Union Territories” is provided in the amended Part VIII of the Constitution and the amended Articles 239 and 240, is given in this book in its proper place.

Articles 350A and 350B provide for Linguistic Minorities and for safeguarding their interests. Special provision with

respect to the States of Andhra Pradesh, Punjab and Bombay have been included in Article 371 which is as follows :—

“ **Art. 371.** *Special provision with respect to the States of Andhra Pradesh, Punjab and Bombay.*—(1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Andhra Pradesh or Punjab, provide for the constitution and functions of regional committees of the Legislative Assembly of the State, for the modification to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of the regional committees.

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Bombay, provide for any special responsibility of the Governor for—

(a) the establishment of separate development boards for Vidarbha, Marathwada, the rest of Maharashtra, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly ;

(b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole ; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.”

This has been the most exhaustive amendment of the Constitution and now it is hoped that for many years to come there will be no more. India stands firmly knit together after the reorganisation of the States and cultural, economic and administrative prosperity can be visualised.

## PART XXI

### TEMPORARY AND TRANSITIONAL PROVISIONS

The Constitution has introduced complete change from the Government of India Act 1935 which it has replaced. It may not be possible to introduce all the provisions of the Constitution immediately and it is bound to take some time before a transition can be effected and the new machinery under the Constitution can be set up; for such interim period temporary and transitional provisions are absolutely necessary so that there may not be abrupt disruption and dislocation of the machinery of the Government leading to chaos in the country; peaceful transition is very essential. This Part of the Constitution makes provisions to that effect. These provisions have importance and significance in the working of the Constitution only during the interim period of transition and after that period is over they lose all importance. According to these provisions the functionaries and the officers in the bodies which were functioning before the commencement of the Constitution shall continue to function under new names after its commencement.

**Temporary power of Parliament to make laws with respect to certain matters in the State List.**—During the war time various control measures were enacted in order to maintain economic stability in the country and even after the war was over, it was found necessary to continue them for some time until a normal State of society was restored. Some of these control measures were in the field occupied by the State List under our Constitution and Parliament had no more power to Legislate about those matters although before the commencement of the Constitution over most of these measures the Central Legislature had absolute command. However, even after commencement of the Constitution it was thought necessary to continue these control measures by a Parliamentary Legislation. Therefore, by Article 369 for a period of five years only the Parliament is given concurrent power of Legislation as regards the matters mentioned below:—

- (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and

woollen textiles, raw cotton (including ginned cotton and unginned cotton or *kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), cattlefodder (including oil cakes and other concentrates), coal including coke and derivatives of coal), iron, steel and mica ;

- (b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of these matters and fees in respect of any of those matters but not including fees taken in any court.

Thus for a period of five years the aforesaid matters which are enumerated in the State List shall be deemed to be enumerated in the Concurrent List and the Parliament shall have concurrent power to make laws with respect to them. But any law made by Parliament, which Parliament would not but for the provisions of this Article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof

**Temporary Provisions with respect to the State of Jammu and Kashmir.**—The State of Jammu and Kashmir had acceded to India according to instrument of accession executed by its ruler on 26th October, 1947 and it is a part of Indian territory and is included in the list of States in Part B of the First Schedule of the Constitution. But the provisions relating to the Part B States contained in Article 238 do not apply to the State of Jammu and Kashmir and Article 370 makes separate provisions for this State. This was necessary in view of the commitment of the Government of India that the people of this State, by a plebiscite would finally determine whether the people would remain within the Union of India and that they would, through their own Constituent Assembly determine the Constitution of this State, and the Union jurisdiction over it ; until the holding of the plebiscite and the sitting of the Constituent Assembly of the State, the Constitution of India

could only provide an interim agreement regarding this State. Thus the application of the other Parts of the Constitution except Article 1 and 370 are to be determined by the President in consultation with the Government of the State of Jammu and Kashmir and the Legislative authority of the Parliament over this State is confined to those items of the Union and Concurrent Lists as are given in the instrument of accession. The above interim arrangement will continue until the Constituent Assembly for Jammu and Kashmir is convened and makes its decision. It will then communicate its recommendations to the President, who will either abrogate Article 370 or make such modifications as may be recommended by that Constituent Assembly.

Therefore Article 370 provides as follows :—

- “(1) Notwithstanding anything of this Constitution,
- (a) the Provisions of Article 233 shall not apply in relation to the State of Jammu and Kashmir ;
  - (b) the power of Parliament to make laws for the said State shall be limited to—
    - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State ; and
    - (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

*Explanation.*—For the purposes of this Article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948.



- (c) the Provisions of Article I and of this Article shall apply in relation to that State ;
- (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify ;

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State ;

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (i) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this Article the President may, by public notification declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify ;

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification."

In conformity with Article 370, the Constitution Application to Jammu and Kashmir Order, 1950 (dated 26th January, 1950) was made by the President in consultation with the Government of the State of Jammu and Kashmir.



<sup>1</sup>[Article 371 makes provision of special nature with respect to the State of Andhra, Punjab and Bombay. The President may from regional committees, in the States of Andhra and Punjab, of their Legislative Assemblies. In respect of the State of Bombay the President may establish separate Development Boards for Vidarba, Marathwada, the rest of Maharashtra, Saurashtra, Kutch, the rest of Gujarat, and he may make provision for equitable allocation of funds in each area, and provide adequate facilities for education and employment in respect of each area.

**Continuance in force of existing laws and their adaptation.**—As a general rule laws passed under the previous Government Acts would have ceased to operate on the commencement of this Constitution on account of the repeal of the Indian Independence Act 1947 and the Government of India Act 1935, along with all the enactments amending or supplementing the general Acts under Article 342. Therefore, the provision, for saving the existing laws and for their adaptation was necessary. This has been done by Article 372 which provides as follows :—

“(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395, but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall as, from such date as may be specified in the order, have

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1. Note.—Article 371 is substituted by the Constitution (Seventh Amendment) Act, 1956, Section 22.

effect subject to the adaptations and modifications so made and any such adaptations or modifications shall not be questioned in any court of law.

(3) Nothing in Clause (2) shall be deemed—

- (a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution ; or
- (b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

*Explanation I.*—The expression ‘law in force’ in this Article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

*Explanation II.*—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.

*Explanation III.*—Nothing in this Article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if the Constitution had not come into force.

*Explanation IV.*—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under

Clause (1) of Article 382 and nothing in this Article shall be construed as continuing any such Ordinance in force beyond the said period."

**<sup>1</sup>[372-A. Power of the President to adapt laws.—**(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

**Power of President to make order with respect to preventive detention.—**Article 373 empowers the President to make order in respect of persons under preventive detention in certain cases, and it is as follows :—

"Until provision is made by Parliament under Clause (7) of Article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier the said Article shall have effect as if for any reference to Parliament in Clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President."

**Judges of the Federal Court and proceedings pending in the Federal Court or the Privy Council.—**Article 374 lays down as follows :—

"(1) The Judges of the Federal Court holding office immediately before the commencement of this Constitu-

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1. Ins. by the Constitution (Seventh Amendment) Act, 1956.

tion shall unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under Article 125 in respect of the Judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court and the Supreme Court shall have jurisdiction to hear and determine the same and the judgment and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect, of any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution.

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease and all appeals and other proceeding pending before the said authority at such commencement shall be transferred to and disposed of by the Supreme Court.

(5) Further provision may be made by Parliament by law to give effect to the provisions of this Article."

**Courts, Authorities and officers.**—Article 375, providing for continuance of the courts, authorities and officers, is given below :—

“All Courts of Civil, Criminal and Revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the Territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution.”

**Judges of the High Courts.**—Article 376, providing for the continuances of the judges of the High Courts, their salaries, allowances, rights and privileges, is as follows :—

**376. Provisions as to Judges of High Court.**—(1) Notwithstanding anything in clause (2) of article 217, the Judges of a High Court in any Province holding office immediately

before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of the Judges of such High Court.

Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court.

(2) The Judge of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression “Judge” does not include an acting Judge or an additional Judge.

**The Comptroller and Auditor-General of India.**—Article 377, providing for continuance of the Auditor-General of India as the Comptroller and Auditor-General of India, is quoted below :—

"The Auditor-General of India holding office immediately before the commencement of this Constitution shall unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under Clause (3) of Article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement.

**Public Service Commissions.**—Provisions regarding the Chairman of and Members of the Public Service Commissions of the Dominion, as well as for those of the Provinces are contained in Article 378, as follows:—

"(1) The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in Clauses (1) and (2) of Article 316 but subject to the proviso to Clause (2) of that Article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise become on such commencement the members of the Public Service Commission for the corresponding State or the member of the Joint State Public Service Commission serving the needs of the corresponding States, as the case may be, and shall notwithstanding anything in Clauses (1) and (2) of Article 316 but subject to the proviso to Clause (2) of that Article, continue to hold office until the expiration of their term of office as determined under the rules which



were applicable immediately before such commencement to such members."

<sup>1</sup>[**Article 378-A. Special provision as to duration of Andhra Pradesh Legislative Assembly.**—Notwithstanding anything contained in Article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the Provisions of Sections 28 and 29 of the States Re-organisation Act, 1956<sup>1</sup> shall unless sooner dissolved continue for a period of five years from the date referred to in the said Section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly.

2[\* \* \* \* \*]

**President's power to remove difficulties.**—Article 392 describes the power of the President to remove difficulties that may arise in the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution; it is as follows :—

"(1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient :

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) The powers conferred on the President by this Article, by Article 324, by Clause (3) of Article 367 and by Article 391 shall, before the commencement of this Constitution, be exercisable by the Governor-General of the Dominion of India."

1. Article 378-A is inserted by the Constitution (Seventh Amendment) Act, 1956.
2. Note.—Articles 379 to 391 are omitted by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule.



The President had made the following orders under clause (1) of this Article :

(1) The Constitution (Removal of Difficulties) Order, No. II of 1950, (C. O. 5 of 26th January, 1950), making adaptations necessary prior to the election of Parliament and the State Legislatures in conformity with the Constitution.

(2) The Constitution (Removal of Difficulties) Order No. III of 1950, (C. O. 6 of 26th January, 1950), making adaptations in Articles 149, 270, 273, 275, 390, paragraph 13 of Schedule VI and inserting Article 330-A, for a period of two years from 26th January, 1950.

(3) The Constitution (Removal of Difficulties) Order No. II, (Amendment) Order.

(4) The Constitution (Removal of Difficulties) Order, No. II, (Second Amendment) Order, dated 11th August 1950.

The Governor-General had promulgated the following Orders in exercise of the powers conferred by Clause (3) of Article 392 :

(1) The Constitution (Removal of Difficulties) Order No. I of 1950, (C. O. I, dated 7th January, 1950), providing that until a President was elected in accordance with Chapter I of Part V of this Constitution, the President shall be "such person as the Constituent Assembly shall have elected in that behalf....." President Rajendra Prasad was elected on 26th January, 1950, in conformity with this Order.

(2) The Constitution (Declaration as to Foreign States) Order of 1950, (C. O. 2, dated 23rd January 1950), declaring members of the Commonwealth not to be 'Foreign States for the purposes of the Constitution *vide* Article 367 (3).

(3) The Constitution (Amendment of the First and Fourth Schedules) Order, 1950 (C. O. 3, dated 25th January, 1950).

**The Constitution** (Eighth Amendment Act, 1959.

This Act amends Article 334 of the Constitution. The words "twenty years" are substituted for the words "ten years."

## PART XXII

### SHORT TITLE, COMMENCEMENT AND REPEALS

Article 393 States :—

“This Constitution may be called the Constitution of India.”

**Commencement.**—Article 394 prescribes the time for commencement of various Articles, as given below:—

“This Article and Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

**Repeals.**—Article 395 provides for Repeal of the following Acts :—

The Indian Independence Act 1947, and the Government of India Act 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949.

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## **<sup>1</sup>FIRST SCHEDULE**

[Articles 1 and 4]

### **1. THE STATES**

<i>Name</i>	<i>Territories</i>
1. Andhhra Pradesh	The territories specified in sub-section (1) of section 3 of the Andhra State Act, 1953 and the territories specified in sub-section (1) of section 3 of the States Reorganisation Act, 1956.
2. Assam	... The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951.
3. Bihar	... The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.
4. Bombay	... The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956.
5. Kerala	... The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956.
6. Madhya Pradesh	The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956.

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<sup>1</sup> The first Schedule was subs. by the Constitution (Seventh Amendment) Act, 1956.

7. Madras ... The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953 and the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956.
8. Mysore ... The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956.
9. Orissa ... The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.
10. Punjab ... The territories specified in section 11 of the States Reorganisation Act, 1956.
11. Rajasthan ... The territories specified in section 10 of the States Reorganisation Act, 1956.
12. Uttar Pradesh. The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province.
13. West Bengal ... The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province and the territory of Chandernagore as defined in clause (c) of section 2 of the

Chandernagore (Merger) Act, 1954 and also the territories specified in subsection (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.

14. Jammu and Kashmir

The territory which immediately before the commencement of this Constitution was comprised in the Indian State of Jammu and Kashmir.

## II. THE UNION TERRITORIES

1. Delhi

... The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi.

2. Himachal Pradesh

The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioner's Provinces under the names of Himachal Pradesh and Bilaspur.

3. Manipur

... The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur.

4. Tripura

... The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.

5. The Andaman and Nicobar Islands

The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the Andaman and Nicobar Islands.

6. The Laccadive, Minicoy and Amindivi Islands

The territory specified in section 6 of the States Reorganisation Act, 1956.

## SECOND SCHEDULE

[Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221]

### PART A

#### PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES 1\* \* \*

1. There shall be paid to the President and to the Governors of the States 1\* \* \* the following emoluments per mensem, that is to say :—

The President	...	10,000 rupees.
The Governor of a State	...	5,500 rupees.

2. There shall also be paid to the President and to the Governors of the States 2\* \* \* such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors of 3[the States] throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.

4\* \* \* \* \*

### PART C

#### PROVISION AS TO THE SPEAKER AND THE DEPUTY SPEAKER OF THE HOUSE OF THE PEOPLE AND THE CHAIRMAN AND THE DEPUTY

1. The words and letter "specified in Part A of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956.
2. The words "so specified" omitted, *ibid*.
3. Subs., *ibid*, for "such States".
4. Part B, omitted, *ibid*.

CHAIRMAN OF THE COUNCIL OF STATES AND THE SPEAKER AND THE DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLY [\*\*\*]<sup>1</sup> AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE COUNCIL OF <sup>2</sup>[A STATE].

7. There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.

8. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly <sup>3</sup>[\*\*\*] and to the Chairman and the Deputy Chairman of the Legislative Council of <sup>4</sup>[a State] such salaries and allowances as were payable respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and, where the corresponding Province had no Legislative Council immediately before such commencement, there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

### PART D

PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURT <sup>4</sup>[\*\*\*].

9. (1) There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :—

The Chief Justice	...	...	5,000 rupees.
Any other Judge	...	...	4,000 rupees.

1. The words and letters "of a State in Part A of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956.

2. Subs., *ibid.* for "any such State."

3. Subs., *ibid.*, for "such State."

4. The words and letters (in States in Part A of the First Schedule) are omitted by the Constitution (Seventh Amendment) Act, 1956.



Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court <sup>1</sup>[shall be reduced—

- (a) by the amount of that pension, and
- (b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and
- (c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.]

(2) Every Judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a Judge who, immediately before the commencement of this Constitution,—

- (a) was holding office as the Chief Justice of the Federal Court and has become on such commencement the Chief Justice of the Supreme Court under clause (1) of Article 374, or
- (b) was holding office as any other Judge of the Federal Court and has on such commencement become a Judge (other than the Chief Justice) of the Supreme Court under the said clause,

during the period he holds office as such Chief Justice or other Judge, and every Judge who so becomes the Chief Justice or other Judge of the Supreme Court shall, in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, entitled to receive in addition to the salary specified in sub-paragraph (1) of this paragraph as special pay an amount equivalent to the difference between the salary

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1. Substituted by the Constitution (Seventh Amendment) Act, 1956  
“for shall be reduced by the amount of pension.”

so specified and the salary which he was drawing immediately before such commencement.

(4) Every Judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the Federal Court.

10. <sup>1</sup>[(1) There shall be paid to the Judges of High Courts, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :—

The Chief Justice	...	...	4,000 rupees.
Any other Judge	...	...	3,500 rupees.

Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced—

- (a) by the amount of that pension, and
- (b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and
- (c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.]

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1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 25, for the original sub-paragraph (1).

(2) Every person who immediately before the commencement of this Constitution—

- (a) was holding office as the Chief Justice of a High Court in any Province and has on such commencement become the Chief Justice of the High Court in the corresponding State under clause (1) of Article 376, or
- (b) was holding office as any other Judge of a High Court in any Province and has on such commencement become a Judge (other than the Chief Justice) of the High Court in the corresponding State under the said clause.

shall, if he was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, be entitled to receive in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, in addition to the salary specified in the said sub-paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

<sup>1</sup>[(3) Any person who, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, was holding office as the Chief Justice of the High Court of a State specified in Part B of the First Schedule and has on such commencement become the Chief Justice of the High Court of a State specified in the said Schedule as amended by the said Act, shall, if he was immediately before such commencement drawing any amount as allowance in addition to his salary, be entitled to receive in respect of time spent on actual service as such Chief Justice, the same amount as allowance in addition to the salary specified in sub-paragraph (1) of this paragraph.]

11. In this Part, unless the context otherwise requires,—

- (a) the expression “Chief Justice” includes an acting Chief Justice, and a “Judge” includes an *ad hoc* Judge ;

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1. Substituted by the Constitution (Seventh Amendment) Act, 1956 S. 25 for the original sub-paragraphs (3) and (4).

(b) "actual service" includes—

- (i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge ;
- (ii) vacations, excluding any time during which the Judge is absent on leave ; and
- (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

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## PART E

### *Provisions as to the Comptroller and Auditor-General of India*

12. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor-General of India under Article 377 shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor-General of India immediately before such commencement.

(3) The rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

**THIRD SCHEDULE**

[Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219]

*Forms of Oaths or Affirmations*

**I**

Form of oath of office for a Minister for the Union :—

“I, A. B., do swear in the name of God  
solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or illwill.”

**II**

Form of oath of secrecy for a Minister for the Union :—

“I, A. B., do swear in the name of God  
solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister.”

**III**

Form of oath or affirmation to be made by a member of Parliament :—

“I, A. B., having been elected (or nominated) a member of the Council of States (or the House of the People) do swear in the name of God  
solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.”

## IV

Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India :—

“I, A. B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India) do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws.”

## V

Form of oath of office for a Minister for a State :—

“I, A. B., do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the State of.....and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or illwill.”

## VI

Form of oath of secrecy for a Minister for a State :—

“I, A. B., do swear in the name of God solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matters which shall be brought under my consideration or shall become known to me as a Minister for the State of.....except as may be required for the due discharge of my duties as such Minister.”

## VII

Form of oath or affirmation to be made by a member of the Legislature of a State :—

“I, A. B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in solemnly the name of God affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.”

## VIII

Form of oath or affirmation to be made by the Judges of a High Court :—

“I, A. B., having been appointed Chief Justice (or a Judge) of the High Court at (or of).....do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws.”

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**FOURTH SCHEDULE**

[Articles 4(1), and 80(2) ]

*Allocation of seats in the Council of States*

To each State or Union territory specified in the first column of the following table, there shall be allotted the number of seats specified in the second column thereof opposite to that State or that Union territory as the case may be.

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1. Substituted by the Constitution (Seventh Amendment) Act, 1956, Sec. 3.



## TABLE

1. Andhra Pradesh	... 18	11. Rajasthan	... 10
2. Assam ...	... 7	12. Uttar Pradesh	... 34
3. Bihar ...	... 22	13. West Bengal	... 16
4. Bombay	... 27	14. Jammu and Kashmir	4
5. Kerala ...	... 9	15. Delhi ...	... 3
6. Madhya Pradesh	... 16	16. Himachal Pradesh...	2
7. Madras...	... 17	17. Manipur	... 1
8. Mysore ...	... 12	18. Tripura	... 1
9. Orissa ...	... 10		
10. Punjab...	... 11		
		TOTAL	...220]

## FIFTH SCHEDULE

[Article 244 (1) ]

Provisions as to the Administration and Control of  
Scheduled Areas and Scheduled Tribes

## PART A

## GENERAL

**1. Interpretation.**—In this Schedule, unless the context otherwise requires, the expression “State”<sup>1</sup>[\* \* \*] does not include the State of Assam.

**2. Executive power of a State in Scheduled Areas.**—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

**3. Report by the Governor** <sup>2</sup>[\* \* \*] **to the President regarding the administration of Scheduled Areas.**—The Governor <sup>2</sup>[\* \* \*] of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

1. The words and letters “means a State specified in Part A or Part B of the First Schedule but” omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

2. The words “or Rajpramukh” omitted, *ibid*.

**PART B****ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES**

**4. Tribes Advisory Council.**—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State :

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor <sup>1</sup>[\* \* \*].

**3. The Governor** <sup>2</sup>[\* \* \*] may make rules prescribing or regulating, as the case may be,—

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof ;

(b) the conduct of its meeting and its procedure in general ; and

(c) all other incidental matters.

**5. Law applicable to Scheduled Areas.**—(1) Notwithstanding anything in the Constitution, the Governor <sup>1</sup>[\* \* \*], may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply

1. The words "or Rajpramukh, as the case may be" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

2. The words "or the Rajpramukh" omitted, *ibid*.

to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor <sup>1</sup>[\* \* \*], may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area ;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area ;
- (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of the paragraph, the Governor <sup>2</sup>[\* \* \*] may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor <sup>2</sup>[\* \* \*] making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

## PART C

### SCHEDULED AREAS

**6. Scheduled Areas—**(1) In this Constitution, the expression “Scheduled Areas” means such areas as the President may by order declare to be Scheduled Areas.

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1. The words “or Rajpramukh, as the case may be” omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

2. The words “or Rajpramukh” omitted, ibid.

(2) The President may at any time by order—

- (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area ;
- (b) alter, but only by way of rectification of boundaries, any Scheduled Area ;
- (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State, to be, or to form part of, a Scheduled Area ;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

## **PART D**

### **AMENDMENT OF THE SCHEDULE**

**7. Amendment of the Schedule.**—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of the Constitution for the purposes of Article 368.

## **SIXTH SCHEDULE**

[Articles 244 (2) and 275 (1)]

### **Provisions as to the Administration of Tribal Areas in Assam**

#### **1. Autonomous districts and autonomous regions.—**

(1) Subject to the provisions of this paragraph, the tribal areas in each item of Part A of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification,—

- (a) include any area in Part A of the said table,
- (b) exclude any area from Part A of the said table,
- (c) create a new autonomous district,
- (d) increase the area of any autonomous district,
- (e) diminish the area of any autonomous district,
- (f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,
- (g) define the boundaries of any autonomous district :

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

**2. Constitution of District Councils and Regional Councils.**—(1) There shall be a District Council for each autonomous district consisting of not more than twenty-four members, of whom not less than three-fourths shall be elected on the basis of adult suffrage.

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of “the District Council of (*name of district*)” and “the Regional Council of (*name of region*),” shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing Tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

- (a) the composition of the District Councils and Regional Councils and the allocation of seats therein ;
- (b) the delimitation of territorial constituencies for the purpose of elections to those Councils ;
- (c) the qualifications for voting at such elections and the preparation of electoral rolls therefor ;
- (d) the qualifications for being elected at such elections as members of such Councils ;
- (e) the term of office of members of such Councils ;
- (f) any other matter relating to or connected with elections or nominations to such Councils ;
- (g) the procedure and the conduct of business in the District and Regional Councils ;
- (h) the appointment of officers and staff of the District and Regional Councils.

(7) The District or the Regional Council may after its first constitution make rules with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules regulating—

- (a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business ; and



- (b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be :

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to the officers and staff of, and the procedure and the conduct of business in, each such Council :

Provided further that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, of the North Cachar and Mikir Hills shall be the Chairman *ex-officio* of the District Council in respect of the territories included in items 5 and 6 respectively of Part A of the table appended to paragraph 20 of this Schedule and shall have power for a period of six years after the first constitution of the District Council, subject to the control of the Governor, to annul or modify any resolution or decision of the District Council or to issue such instructions to the District Council, as he may consider appropriate, and the District Council shall comply with every such instruction issued.

**3. Powers of the District Councils and Regional Councils to make laws.**—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

- (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town :

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of Assam in accordance with the law for the time being in force authorising such acquisition ;



- (b) the management of any forest not being a reserved forest ;
- (c) the use of any canal or water-course for the purpose of agriculture ;
- (d) the regulation of the practice of *jhum* or other forms of shifting cultivation ;
- (e) the establishment of village or town committees or councils and their powers ;
- (f) any other matter relating to village or town administration, including village or town police and public health and sanitation ;
- (g) the appointment or succession of Chiefs or Headmen ;
- (h) the inheritance of property ;
- (i) marriage ;
- (j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(2) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

**4. Administration of justice in autonomous districts and autonomous regions.**—(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village

councils or presiding officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

- (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph ;
- (b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph ;
- (c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph ;
- (d) the enforcement of decisions and orders of such Councils and courts ;
- (e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

**5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.**—

(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate; and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

**6. Powers of the District Council to establish primary schools, etc.**—The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways in the district and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

**7. District and Regional Funds.**—(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District

Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) Subject to the approval of the Governor, rules may be made by the District Council and by the Regional Council for the management of the District Fund or, as the case may be, the Regional Fund, and the rules so made may prescribe the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters, aforesaid.

**8. Powers to assess and collect land revenue and to impose taxes.**—(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of Assam in assessing lands for the purpose of land revenue in the State of Assam generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons, resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

- (a) taxes on professions, trades, callings and employments ;
- (b) taxes on animals, vehicles and boats ;

- (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries ; and
- (d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph.

**9. Licences or leases for the purpose of prospecting for, or extraction of minerals.**—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of Assam in respect of any area within an autonomous district as may be agreed upon between the Government of Assam and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

**10. Power of District Council to make regulations for the control of, money-lending and trading by non-tribals.**—

(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending ;
- (b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender ;

- (c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council ;
- (d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council :

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council :

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

**11. Publication of laws, rules and regulations made under the Schedule.**—All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

**12. Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions.**—(1) Notwithstanding anything in this Constitution—

- (a) no Act of the Legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District



Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit ;

- (b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

**13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.**—The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State of Assam shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under Article 202.

**14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions.**—(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

- (a) the provision of educational and medical facilities and communications in such districts and regions ;



- (b) the need for any new or special legislature in respect of such districts and regions ; and
- (c) the administration of the laws, rules and regulations made by the District and Regional Councils ;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam.

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

**15. Annulment or suspension of acts and resolutions of District and Regional Councils.**—(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made :

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

**16. Dissolution of a District or Regional Council.—**

The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council and—

- (a) direct that a fresh general election shall be held immediately for the reconstitution of the Council ; or
- (b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months :

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election :

Provided further that no action shall be taken under Clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

**17. Exclusion of areas from autonomous districts in forming constituencies in such districts.—**For the purposes of elections to the Legislative Assembly of Assam, the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

**18. Application of the provisions of this Schedule to areas specified in Part B of the table appended to Paragraph 20.—**

- (1) The Governor may—
- (a) subject to the previous approval of the President, by public notification, apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part B of the table appended to paragraph

20 of this Schedule or any part of such area and thereupon such area or part shall be administered in accordance with such provisions, and

- (b) with like approval, by public notification, exclude from the said table any tribal area specified in Part B of that table or any part of such area.

(2) Until a notification is issued under sub-paragraph (1) of this paragraph in respect of any tribal area specified in Part B of the said table or any part of such area, the administration of such area or part thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent and the provisions of <sup>1</sup>[Article 240] shall apply thereto as if such area or part thereof were a <sup>2</sup>[Union territory specified in that Article].

(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President the Governor shall act in his discretion.

**19. Transitional provisions.**—(1) As soon as possible after the commencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely:—

- (a) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;
- (b) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29, and Sch., for "Part IX".

2. Subs., *ibid* for "territory specified in Part D of the First Schedule".

of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

(2) Any direction given by the Governor under clause (a) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

(3) All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

**20. Tribal areas.**—(1) The areas specified in Parts A and B of the table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Myllem :

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8, and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

<sup>1</sup>[(2A) The Mizo District shall comprise the area which at the commencement of this Constitution was known as the Lushai Hills District.]

<sup>2</sup>[(2B) The Naga Hills-Tuensang Area shall comprise the areas which at the commencement of this Constitution were known as the Naga Hills District and the Naga Tribal Area.]

(3) Any reference in the table below to any district (other than the United Khasi-Jaintia Hills District <sup>1</sup>[and the Mizo District]) or administrative area <sup>2</sup>[(other than the Naga Hills-Tuensang Area)] shall be construed as a reference to that district or area at the commencement of this Constitution :

1. Inserted by Act 18 of 1954, Section 3.

2. Inserted by Act 42 of 1957, Section 3.

Provided that the tribal areas specified in Part B of the table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in that behalf.

### TABLE

#### PART A

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. <sup>1</sup>[The Mizo District.]
- <sup>2</sup>[4. \* \* \*]
5. The North Cachar Hills.
6. The Mikir Hills.

#### PART B

1. North East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District and Misimi Hills District.

- <sup>3</sup>[2. The Naga Hills-Tuensang Area.]

**21. Amendment of the Schedule.**—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

### SEVENTH SCHEDULE OF THE CONSTITUTION

[Article 246]

#### List I—Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive

1. Subs. by Act 18 of 1954 Section 3 for "The Lushai Hills District."
2. Item (4) "The Naga Hills District" omitted by the Naga Hills-Tuensang Area Act, 1957 (42 of 1957) S. 3.
3. Subs. *ibid* for "2. The Naga Tribal Area".

in times of war to its prosecution and after its termination to effective demobilisation.

2. Naval, military and air forces ; any other armed forces of the Union.

3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.

4. Naval, military and air force works.

5. Arms, firearms, ammunition and explosives.

6. Atomic energy and mineral resources necessary for its production.

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

8. Central Bureau of Intelligence and Investigation.

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India ; persons subjected to such detention.

10. Foreign Affairs ; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.



18. Extradition.

19. Admission into, and emigration and expulsion from, India ; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air ; offences against the Law of Nations committed on land, or the high seas, or in the air.

22. Railways.

23. Highways declared by or under law made by Parliament to be national highways.

24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels ; the rule of the road on such waterways.

25. Maritime shipping and navigation, including shipping and navigation on tidal waters ; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

26. Light-houses, including light-ships, beacons and other provisions for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith ; seamen's and marine hospitals.

29. Airways ; aircraft and air navigation ; provision of aerodromes ; regulation and organisation of air traffic and of aerodromes ; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.



31. Posts and telegraphs ; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State [\* \* \*] subject to legislation by the State, save in so far as Parliament by law otherwise provides.

33. [\* \* \*]

34. Court of Wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender ; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post office Savings Bank.

40. Lotteries organised by the Government of India or the Government of State.

41. Trade and commerce with foreign countries ; import and export across custom frontiers ; definition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

45. Banking.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchanges and futures markets.
49. Patents, inventions and designs ; copyright ; trade marks and merchandise marks.
50. Establishment of standards of weight and measure.
51. Establishment of standards of quality of goods to be exported out of India or transported from one State to another.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
53. Regulation and development of oilfields and mineral oil resources ; petroleum and petroleum products ; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oilfields.
56. Regulation, and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
57. Fishing and fisheries beyond territorial waters.
58. Manufacture, supply and distribution of salt by Union agencies ; regulation and control of manufacture, supply and distribution of salt by other agencies.
59. Cultivation, manufacture, and sale for export, of opium.
60. Sanctioning of cinematograph films for exhibition.
61. Industrial disputes concerning Union employees.
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the

Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

65. Union agencies and institutions for—

- (a) professional, vocational or technical training, including the training of police officers ; or
- (b) the promotion of special studies or research ; or
- (c) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

67. Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.

68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India ; Meteorological organisations.

69. Census.

70. Union public services ; all India services ; Union Public Service Commission.

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

72. Elections to Parliament, to the Legislature of States and to the offices of President and Vice-President ; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or Commissions appointed by Parliament.

75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors ; salaries and allowances of the Ministers for the Union ; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such court), and the fees taken therein ; persons entitled to practice before the Supreme Court.

[78. Constitution and organisation of the High Courts except provisions as to officers and servants of High Courts ; persons entitled to practice before the High Courts.]

79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of High Court from, any Union territory.

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated ; extension of the powers and jurisdiction of members

of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration ; inter-State quarantine.
82. Taxes on income other than agricultural income.
83. Duties of customs including export duties.
84. Duties of excise on tobacco and other goods manufactured or produced in India except—
  - (a) alcoholic liquors for human consumption ;
  - (b) opium, Indian hemp and other narcotic drugs and narcotics.

But including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

85. Corporation tax.
86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.
87. Estate duty in respect of property other than agricultural land.
88. Duties in respect of succession to property other than agricultural land.
89. Terminal taxes on goods or passengers, carried by railway, sea or air ; taxes on railway fares and freights.
90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.
91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of share, debentures, proxies and receipts.
92. Taxes on the sale or purchase of newspapers and on advertisements published therein.
- 92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
93. Offences against laws with respect to any of the matters in this List.

94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List ; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

### **List II—State List**

1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).

2. Police, including railway and village police.

3. Administration of justice ; constitution and organisation of all courts, except the Supreme Court and the High Court ; officers and servants of the High Court ; procedure in rent and revenue courts ; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other States for the use of prisons and other institutions.

5. Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of Local Self-Government or village administration.

6. Public health and sanitation ; hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.



8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

9. Relief of the disabled and unemployable.

10. Burials and burial grounds ; cremations and cremation grounds.

11. Education including universities, subject to the provisions of Entries 63, 64, 65, and 66 of List I and Entry 25 of List III.

12. Libraries, museums and other similar institutions controlled or financed by the State ; ancient and historical monuments and records other than those [declared by or under law made by Parliament] to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways ; roadways ; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways ; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. preservation, protection and improvement of stock and prevention of animal diseases ; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents ; transfer and alienation of agricultural land ; land improvement and agricultural loans ; colonization.

19. Forests.



20. Protection of wild animals and birds.
21. Fisheries.
22. Courts of Wards subject to the provisions of Entry 34 of List I ; encumbered and attached estates.
23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
24. Industries subject to the provisions of [entries 7 and 52] of List I.
25. Gas and gas-works.
26. Trade and commerce within the State subject to the provisions of Entry 33 of List III.
27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III.
28. Markets and fairs.
29. Weights and measures except establishment of standards.
30. Money-lending and money-lenders ; relief of agricultural indebtedness.
31. Inns and inn-keepers.
32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities ; unincorporated trading, literary, scientific, religious and other societies and associations ; co-operative societies.
33. Theatres and dramatic performances ; cinemas subject to the provisions of Entry 60 of List I ; sports, entertainments and amusements.
34. Betting and gambling.
35. Works, lands and buildings vested in or in the possession of the State.

[\* \* \*]

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.

41. State public services ; State Public Service Commission.

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

44. Treasure trove.

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate Duty in respect of agricultural land.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same

or lower rates on similar goods manufactured or produced elsewhere in India :—

- (a) alcoholic liquors for human consumption ;
- (b) opium, Indian hemp and other narcotic drugs and narcotics ;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this Entry.

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

53. Taxes on the consumption or sale of electricity.

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

55. Taxes on advertisements other than advertisements published in the newspapers.

56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III.

58. Taxes on animals and boats.

59. Tools.

60. Taxes on professions, trades, callings and employments,

61. Capitation taxes.

62. Taxes on luxuries, including taxes on entertainments amusements, betting and gambling.

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rate of stamp duty.

64. Offences against laws with respect to any of the matters in this List.

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

### List III—Concurrent List

1. Criminal Law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.

4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

5. Marriage and divorce, infants and minors, adoption, wills, intestacy and succession, joint family and partition, all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

6. Transfer of property other than agricultural land, registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

8. Actionable wrongs.

9. Bankruptcy and insolvency.

10. Trust and Trustees.
11. Administrators-general and official trustees.
12. Evidence and oaths ; recognition of laws, public acts and records, and judicial proceedings.
13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
14. Contempt of court, but not including contempt of the Supreme Court.
15. Vagrancy ; nomadic and migratory tribes.
16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
17. Prevention of cruelty to animals.
18. Adulteration of foodstuffs and other goods.
19. Drugs and poisons subject to the provisions of entry 59 of List I with respect to opium.
20. Economic and social planning.
21. Commercial and industrial monopolies, combines and trusts.
22. Trade Unions ; industrial and labour disputes.
23. Social security and social insurance ; employment and unemployment.
24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
25. Vocational and technical training of labour.
26. Legal, medical and other professions.
27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
28. Charities and charitable institutions, charitable and religious endowments and religious institutions.
29. Prevention of the extension from one State to another of infectious diseases or pests affecting men, animals or plants.

30. Vital statistics including registration of births and deaths.

31. Ports other than those declared by or under law made by parliament or existing law to be major ports.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.

<sup>1</sup>[33. Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry, where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products ;

(b) foodstuffs, including edible oilseeds and oils ;

(c) cattle fodder, including oilcakes and other concentrates ;

(d) raw cotton, whether ginned or unginned, and cotton seed ; and

(e) raw jute].

34. Price control.

35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

36. Factories.

37. Boilers.

38. Electricity.

39. Newspapers, books and printing presses.

40. Archaeological sites and remains other than those <sup>2</sup>[declared by or under law made by Parliament] to be of national importance.

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1. Substituted by the Constitution of India (Third Amendment) Act, 1954.

2. Substituted by the Constitution (Seventh Amendment) Act, 1956 S. 27, for "declared by Parliament by law".

41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
- <sup>1</sup>[42. Acquisition and requisitioning of property].
43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

### EIGHTH SCHEDULE

[Articles 344 (1) and 351].

#### Languages

1. Assamese.
2. Bengali.
3. Gujarati.
4. Hindi.
5. Kannada.
6. Kashmiri.
7. Malayalam.
8. Marathi.
9. Oriya.

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1. Subs. by S. 26, *ibid.*, for the original entry 42.



10. Punjabi.
11. Sanskrit.
12. Tamil.
13. Telugu.
14. Urdu.

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### **<sup>1</sup>NINTH SCHEDULE**

[Article 31 B]

1. The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).
2. The Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948).
3. The Bombay Maleki Tenure Abolition Act, 1949 (Bombay Act LXI of 1949).
4. The Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949).
5. The Panch Mahals Mehwassi Tenure Abolition Act, 1949 (Bombay Act LXIII of 1949).
6. The Bombay Khoti Abolition Act, 1950 (Bombay Act VI of 1950).
7. The Bombay Pargana and Kulkarni Watan Abolition Act, 1950 (Bombay Act LX of 1950).
8. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act I of 1951).
9. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948).
10. The Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1950 (Madras Act I of 1950).
11. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act I of 1951).

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1. Added by the Constitution (First Amendment) Act, 1951, S. 14.

12. The Hyderabad (Abolition of Jagirs) Regulation, 1358F. (No. LXIX of 1358, Fasli).

13. The Hyderabad Jagirs (Commutation) Regulation, 1359F. (No. XXV of 1359, Fasli).

<sup>1</sup>[14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U. P. Act XXVI of 1948).

16. The Re-settlement of Displaced Persons (Land Acquisition) Act, 1948 (LX of 1948).

17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by Section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).

18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by Section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).

20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), (as amended by West Bengal Act XXIX of 1951) ]<sup>2</sup>

1. Added by the Constitution (Fourth Amendment) Act, 1955, S. 5.

2. In its application to the State of Jammu and Kashmir, the following entries shall be added :—

“21. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII of 2007).

22. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of 2006).

23. The Jammu and Kashmir Tenancy Act (No. II of 1930).

24. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVII of 2006).

25. The Jammu and Kashmir Alienation of Land Act (No. V of 1995).

26. Order No. 6-H of 1951, dated 10th March 1951, regarding Resumption of Jagirs and other assignments of Land Revenue, etc.

27. The Jammu and Kashmir State Kuth Act (No. I of 1978)”.

## **APPENDIX**

### **THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954**

In exercise of the powers conferred by Clause (1) of Article 370 of the Constitution, the President, with the concurrence of the Government of the State of Jammu and Kashmir, is pleased to make the following Order :—

1. (1) This Order may be called the Constitution Application to Jammu and Kashmir Order, 1954,

(2) It shall come into force on May 14, 1954 and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1950.

2. The provisions of the Constitution, which in addition to Article 1 and Article 370, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modification subject to which they shall so apply shall be as follows :

#### **(1) The Preamble**

#### **(2) Part I**

To Article 3, there shall be added the following further proviso, namely;

“Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State.”

#### **(3) Part II**

(a) This Part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from January 26, 1950.

- (b) To Article 7, there shall be added the following further proviso, namely :—

“Provided further that nothing in this Article shall apply to a permanent resident of the State of Jammu and Kashmir who after having so migrated to the territory now included in Pakistan, returns to the territory of that State under a permit for resettlement in that State, or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India.”

#### (4) Part III

- (a) In Article 13, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.
- (b) In Clause (4) of Article 15, the reference to Scheduled Tribes shall be omitted.
- (c) In Clause (3) of Article 16, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.
- (d) In Article 19, for a period of five years from the commencement of this Order :
  - (i) In Clauses (3) and (4) after the words “in the interests of” the words “the security of the State” shall be inserted.
  - (ii) In Clause (5) for the words “or for the protection of the interest of any Scheduled Tribe” the words “or in the interests of the security of the State” shall be substituted ; and
  - (iii) The following new clause shall be added, namely:
    - (7) The words “reasonable restrictions” occurring in Clauses (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable,
- (e) In clauses (4) and (7) of Article 22, for the word “Parliament,” the words “the Legislature of the State” shall be substituted ;

- (f) In Article 31, Clauses (3), (4) and (6) shall be omitted ; and for Clause (5), there shall be substituted the following clause, namely :—
- “(5) Nothing in Clause (2) shall affect—
- (a) the provisions of any existing law ; or
- (b) the provisions of any law which the State may hereafter make—
- (i) for the purpose of imposing or levying any tax or penalty ; or
- (ii) for the promotion of public health or the prevention of danger to life or property ; or
- (iii) with respect to property declared by law to be evacuee property.”
- (g) In Article 31A, the proviso to Clause (1) shall be omitted ; and for sub-clause (a) of Clause (2) the following sub-clause shall be substituted, namely :—
- (a) “estate” shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—
- (i) sites of buildings and other structures on such land ;
- (ii) trees standing on such land ;
- (iii) forest land and wooded waste ;
- (iv) area covered by or fields floating over water ;
- (v) sites of *jandars* and *gharats* ;
- (vi) any jagir, *inam*, *muafi* or *mukarrari* or other similar grant ; but does not include—
- (i) the site of any building in any town, or town-area or village *abadi* or any land appurtenant to any such building or site ;
- (ii) any land which is occupied as the site of a town or village ; or
- (iii) any land reserved for building purposes in a municipal or notified-area or cantonment or town-area or any area for which a town planning scheme is sanctioned.

### High Court's Powers

- (b) In Article 32, Clause (3) shall be omitted, and after Clause (2), the following new clause shall be inserted, namely :—

“(2A) Without prejudice to the powers conferred by Clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by this Part.”

- (i) In Article 35—

(i) references to the commencement of the Constitution shall be construed as references to the commencement of this Order :

(ii) in clause (a) (i) the words, figures and brackets “clause (3) of Article 16, Clause (3) of Article 32” shall be omitted and

(iii) after Clause (b), the following clause shall be added namely :—

“(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of five years from the commencement of the said Order except as respects things done or omitted to be done before the expiration thereof.”

(j) After Article 35, the following new Article shall be added namely :—

35-A. “Saving of laws with respect to permanent residents and their rights : Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu

and Kashmir, and no law hereafter enacted by the Legislature of the State :

- (a) defining the class of persons who are or shall be permanent residents of the State of Jammu and Kashmir ; or
- (b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects :—
  - (i) employment under the State Government ;
  - (ii) acquisition of immovable property in the State ;
  - (iii) settlement in the State ; or
  - (iv) right to scholarships and such other forms of aid as the State Government may provide ;

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.”

#### (5) Part V

- (a) In Articles 54 and 55, references to the elected members of the House of the People and to each such member shall include references to the representatives of the State of Jammu and Kashmir in that House, and the population of the State shall be deemed to be 44,10,000.
- (b) In the proviso to Clause (1) of Article 73, the words “or in any law made by Parliament” shall be omitted.
- (c) Article 81 shall apply subject to the modification “that the representatives of the State in the House of the People shall be appointed by the President on the recommendations of the Legislature of the State.”
- (d) In Article 134, Clause (2), after the words “Parliament may,” the words “on the request of the Legislature of the State” shall be inserted.
- (e) Articles 135, [\* \*]<sup>1</sup> and 139 shall be omitted.
- (f) In Articles 149 and 150, references to the States shall be construed as not including the State of Jammu and Kashmir.
- (g) In Article 151, Clause (2) shall be omitted.

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1. Fig. (136) deleted by the Constitution Application to Jammu and Kashmir Order, 1960.



**(5A) Part VI<sup>1</sup>**

- (a) Articles 153 to 217, Article 219, Article 221 and Articles 223 to 237 shall be omitted.
- (b) In Article 220, references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Amendment Order, 1960.
- (c) To Article 222, the following new clause shall be added, namely :—
  - “(2) Every such transfer from the High Court of Jammu and Kashmir or to that High Court shall be made after consultation with the Sadar-i-Riyasat.” ;

**(6) Part XI**

- (a) In Article 246, the words, brackets and figures “Notwithstanding anything in clauses (2) and (3)” occurring in Clause (1) and Clauses (2), (3) and (4) shall be omitted.
- (b) Articles 248 and 249 shall be omitted.
- (c) In Article 250, for the words “to any of the matters enumerated in the State List,” the words “also to matters not enumerated in the Union List” shall be substituted.
- (d) In Article 250, for the words and figures, “Articles 249 and 250” the word and figures “Article 250” shall be substituted, and the words “under this Constitution” shall be omitted; and, for the words “under either of the said Articles,” the words “under the said Article” shall be substituted.
- (e) To Article 253, the following proviso shall be added, namely :—

“Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State.”

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1. Added, *ibid.*

- (f) In Article 254, the words, brackets and figures "or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2) and the words "or as the case may be, the existing law," occurring in Clause (1) and the whole of Clause (2) shall be omitted.
- (g) Article 255 shall be omitted.

#### **Union duties.**

- (h) Article 256 shall be renumbered as Clause (1) of that Article, and the following new clause shall be added thereto, namely :—

"(2) The State of Jammu and Kashmir shall so exercise its Executive Power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State and in particular, the said State shall, if so required by the Union, acquire or requisite property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India."

- (i) Article 259 shall be omitted.

- (j) In Clause (2) of Article 261, the words "made by Parliament" shall be omitted.

#### **(7) Part XII**

- (a) Clause (2) of Article 267, Article 273, Clause (2) of Article 283, Articles 290 and 291 shall be omitted.
- (b) In Articles 266, 282, 284, 298, 299 and 300, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.
- (c) In Articles 277 and 295, references to the commencement of the Constitution shall be construed as references to the commencement of the Order.

#### **(8) Part XIII**

- (a) In clause (1) of Article 303, the words "by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule" shall be omitted.

- (b) In Article 306, references to the commencement of the Constitution shall be construed as reference to the commencement of this Order.

#### **(9) Part XIV**

In Article 308, after the words "First Schedule," the words "other than the State of Jammu and Kashmir" shall be added.

#### **(10) Part XV**

- (a) In clause (1) Article 324, the reference to the Constitution shall, in relation to elections to either House of the Legislature of Jammu and Kashmir, be construed as a reference to the Constitution of Jammu and Kashmir.
- (b) Articles 325, 326, 327, 328 and 32 shall be omitted.
- (c) In Article 329 clause (a) shall be omitted and in clause (b) the reference to a State shall be construed as not including a reference to the State of Jammu and Kashmir.

#### **(11) Part XVI**

- (a) In Article 330, reference to the "Scheduled Tribes" shall be omitted.
- (b) Articles 331, 332, 333, 336, 337, 339 and 342 shall be omitted.
- (c) In Articles 334 and 335, references to the State or the States shall be construed as not including references to the State of Jammu and Kashmir.

#### **(12) Part XVII**

The provisions of this Part shall apply only in so far as they relate to :

- (i) The official language of the Union ;
- (ii) The official language for communication between one State and another, or between a State and the Union; and
- (iii) The language of the proceedings in the Supreme Court.

#### **(13) Part XVIII**

- (a) To Article 352, the following new clause shall be added, namely :—

"(4) No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respect Article 354) ; unless it is made at the request or with the concurrence of the Government of that State."

(b) Articles 356, and 357 and 360 shall be omitted.

### **Sadar-i-Riyasat**

#### **In Part XIX :**

(a) In Article 361, after clause (4), the following Clause shall be added, namely :—

"(5) The provision of this Article shall apply in relation to the Sadar-i-Riyasat of Jammu and Kashmir as they apply in relation to a Rajpramukh, but without prejudice to the provisions of the Constitution of that State."

(b) Articles 362 and 365 shall be omitted.

(c) In Article 366, Clause (21) shall be omitted.

(d) To Article 367, there shall be added the following Clause, namely :—

"[4] For the purpose of this Constitution as it applies in relation to the State of Jammu and Kashmir :—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State ;

(b) references to the Government of the said State shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers ;

(c) references to a High Court shall include references to the High Court of Jammu and Kashmir.

(d) references to the Legislature of the Legislative Assembly of the said State shall be construed as including references to the Constituent Assembly of the said State ;

- (e) references to the permanent residents of the said States shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, were recognized as State subjects under the law in force in the State or who are recognized by any law made by the Legislature of the State as permanent resident of the State, and
- (f) references to the Rajpramukh shall be construed as references to the persons for the time being recognized by the President as the Sadar-i-Riyasat of Jammu and Kashmir and as including references to any person for the time being recognized by the President as being competent to exercise the powers of the Sadar-i-Riyasat.

### (15) Part XX.

To Article 368, the following Proviso shall be added, namely :—

“Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under Clause (1) of Article 370.”

### (16) Part XXI.

- (a) Articles 369, 371, 373, Clauses (1), (2), (3) and (5) of Article 374 and Articles 376 to 392 shall be omitted.
- (b) In Article 372 ;
  - (i) Clauses (2) and (3) shall be omitted ;
  - (ii) references to the laws in force in the territory of India shall include references to *hidayats*, *ailans*, *ishthihars*, circulars, *robkars*, *irshads*, *yadashts*, State Council Resolutions, Resolutions of the Constituent Assembly, and other instruments having the force of law in the territory of the State of Jammu and Kashmir ; and

- (iii) references to the commencement of this Constitution shall be construed as references to the commencement of this Order.

### **Privy Council**

- (c) In clause (4) of Article 374, the reference to the authority functioning as the Privy Council of a State shall be construed as a reference to the Advisory Board constituted under the Jammu and Kashmir Constitution Act, 1946, and references to the commencement of this Constitution shall be construed as references to the commencement of this Order.

### **(17) Part XXXII.**

Articles 394 and 395 shall be omitted.

### **(18) First Schedule**

### **(19) Second Schedule**

Paragraph 6 shall be omitted.

### **(20) Third Schedule**

Forms V, VI, VII and VIII shall be omitted.

### **(21) Fourth Schedule**

### **(22) Seventh Schedule**

- (a) In the Union List.

- (i) for Entry 3, the Entry "3. Administration of cantonments" shall be substituted ;

- (ii) Entries 8, 9, 33 and 34, the words "trading corporations including" in Entry 43, Entries 44, 50, 52, 54, 55, 60, 67, 69, 78 and 79, the words "inter-State migration" in Entry 81, and Entry 97 shall be omitted ;

- (iii) for Entry 53, the Entry "53, petroleum and petroleum products, but excluding the regulation and development of oilfields and mineral oil

resources ; other liquids and substances declared by Parliament by law to be dangerously inflammable" shall be substituted ; and

(iv) in Entries 72 and 77, the references to the States shall be construed as not including a reference to the State of Jammu and Kashmir.

(b) The State List and the Concurrent List shall be omitted.

### **(23) Eighth Schedule**

### **(24) Ninth Schedule**

After Entry 13, the following entries shall be added namely :—

"14. The Jammu and Kashmir Big Landed Estate Abolition Act (No. XVII of 2007).

15. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of 2006).

16. The Jammu and Kashmir Tenancy Act (No. II of 1280).

17. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVI of 2006).

18. The Jammu and Kashmir Alienation of Land Act (No. V of 1995).

19. Order No. 6-H of 1951 dated March 10, 1951, regarding resumption of jagirs and other assignments of land revenue, etc.

20. The Jammu and Kashmir State Kuth Act (No. 1 of 1978).'

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